

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

| | | |
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| In the Matter of: |) | |
| |) | |
| Application for Certification |) | Docket No. |
| for Mirant Corporation's |) | 00-AFC-4 |
| Potrero Power Plant |) | |
| Unit 7 Project |) | |
| _____ |) | |

VOLUME V

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WEDNESDAY, JULY 24, 2002

10:08 a.m.

Reported by:
Peter Petty
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Commissioner, Presiding Member

HEARING OFFICER AND ADVISOR PRESENT

Stanley W. Valkosky, Hearing Officer

Michael Smith, Advisor to Commissioner Keese

STAFF AND CONSULTANTS PRESENT

William W. Westerfield, III, Staff Counsel

Mark Pryor, Project Manager

Mike Ringer, Planner III
Air Quality, Health, & Waste Management Unit

APPLICANT

Michael J. Carroll, Attorney
Latham & Watkins

Dale Shileikis
Kelly Haggerty
Ray Rice, Principal Engineering Geologist
URS Corporation

Marcus Young
Singer and Associates

INTERVENORS AND CONSULTANTS

Jacqueline Minor, Deputy City Attorney
City and County of San Francisco

William B. Rostov, Staff Attorney
Communities for a Better Environment

Alan Ramo
Our Children's Earth Foundation & Southeast
Alliance for Environmental Justice

INTERVENORS AND CONSULTANTS (continued)

Carol Bach, Assistant Deputy Director
Environmental Health and Safety Programs
Port of San Francisco

Dr. John Fetzer, Founder & Principal
FETZPAHS Consulting

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P R O C E E D I N G S

10:08 a.m.

COMMISSIONER PERNELL: Good morning.

This is the continuation of the evidentiary hearings for the proposed Potrero Unit Seven project. My name is Commissioner Pernell. I am the presiding member of the committee. The other member of the committee is Commissioner Keese who is unable to be here this morning.

To my right is our hearing officer, Mr. Valkosky. To his right is Chairman Keese's advisor, Mr. Smith.

This morning what we'll do is have the participants introduce themselves and their team for today, starting with the applicant, Mr. Carroll.

MR. CARROLL: Thank you. Mike Carroll, Latham and Watkins, on behalf of Mirant. With me here today are Dale Shileikis and Kelly Haggerty with URS Corporation, Mirant's environmental consultants; also with URS and our witness today on waste management is Mr. Ray Rice, and also Marcus Young with Singer and Associates, who has stepped out of the room. Good morning.

COMMISSIONER PERNELL: Good morning.

1 Staff, please.

2 MR. WESTERFIELD: Thanks, Commissioner
3 Pernell. Bill Westerfield --

4 COMMISSIONER PERNELL: Mr. Westerfield.

5 MR. WESTERFIELD: -- on behalf of the
6 Energy Commission staff, and with me here today is
7 Mark Pryor, who is the project manager. And to my
8 right is Mike Ringer, who will testify today on
9 waste management.

10 COMMISSIONER PERNELL: Good morning.

11 And intervenors, starting with the City
12 and County of San Francisco.

13 MS. MINOR: Good morning. Jackie Minor
14 for the City Attorney's Office, and with me today
15 are our two witnesses, Dr. John Fetzer and Carol
16 Bach, who is a deputy director at the San
17 Francisco Port.

18 COMMISSIONER PERNELL: Okay. Good
19 morning.

20 MR. RAMO: Good morning. Alan Ramo, for
21 Our Children's Earth and Southeast Alliance for
22 Environmental Justice.

23 MR. ROSTOV: William Rostov for
24 Communities for a Better Environment. We have
25 Mike Thomas and Greg Karras in the audience as

1 well.

2 COMMISSIONER PERNELL: Good morning.

3 Are there any other intervenors? Any elected
4 officials? Anyone else representing other
5 agencies?

6 Seeing none, I'll now turn the hearing
7 over to our hearing officer, Mr. Valkosky.

8 HEARING OFFICER VALKOSKY: Thank you,
9 Commissioner Pernell. The only topic on today's
10 agenda is waste management, and after the
11 conclusion of this topic we will conduct a status
12 conference/prehearing conference, as previously
13 noticed.

14 I'd like the parties to look at
15 Attachment D under the topic of waste management
16 and let me know if there are any changes in terms
17 of witnesses or anything that may be incorrect on
18 the agenda.

19 MR. WESTERFIELD: No changes by staff.

20 MR. CARROLL: None from the applicant.

21 MS. MINOR: The City does have a change
22 in witnesses. Our two witnesses are John Fetzer
23 and Carol Bach. Jay Ach and Cynda Maxon, who were
24 previously noticed as witnesses, both had
25 conflicts and are not available.

1 HEARING OFFICER VALKOSKY: Okay. So
2 that's Bach and Fetzer as the witnesses.

3 MS. MINOR: That's correct.

4 MR. RAMO: The only change I would make
5 is after reviewing the City's testimony, I'm going
6 to raise my estimate to 60 minutes, though I'll
7 remain optimistic and try to do it quickly.

8 HEARING OFFICER VALKOSKY: Thank you,
9 Mr. Ramo.

10 Mr. Rostov, any changes?

11 MR. ROSTOV: No changes.

12 HEARING OFFICER VALKOSKY: Okay. With
13 that, we'll begin with the topic of waste
14 management. Mr. Carroll, call your witness and
15 have him sworn, please.

16 MR. CARROLL: Thank you.

17 Applicant calls Mr. Ray Rice in the
18 topic area of waste management.

19 THE REPORTER: Would you remain standing
20 and raise your right hand, please.
21 Whereupon,

22 RAY RICE

23 Was called as a witness herein and, after first
24 being duly sworn, was examined and testified as
25 follows:

1 MR. CARROLL: Before beginning with
2 Mr. Rice, I wanted to write a brief explanation of
3 the scope of the testimony that we plan to present
4 today. We have identified on the list of topics
5 together and provided by the committee, the topic
6 obviously of waste management, and the topic of
7 water and soils.

8 In the application for certification,
9 issues related to contaminated soils, contaminated
10 sediments and those sorts of things were dealt
11 with in our soils and water sections. They're
12 touched upon but only lightly in our waste
13 section. So I know all of the parties handle a
14 little bit differently. For example, the FSA
15 tends to deal with contaminated soils and
16 sediments in both the waste section and the soil
17 section.

18 Our testimony is going to be fairly
19 consistent with the way we organized our AFC, and
20 by that I mean we don't intend to get into a great
21 deal of detail about contaminated soils and
22 sediments today, as you'll note we identified a
23 pretty significant panel of six witnesses on soil
24 and water, and that's where we intended to present
25 the bulk of our testimony on how contaminated

1 soils would be handled during construction and
2 sediment, offshore and that sort of thing.

3 So I just wanted to -- That's probably
4 clear from reading the prepared testimony, but I
5 wanted to make it clear, the scope of the topics
6 that Mr. Rice is testifying on, and it's really
7 primarily limited to section 8.13 of the AFC.

8 HEARING OFFICER VALKOSKY: Thank you for
9 that clarification, Mr. Carroll.

10 DIRECT EXAMINATION

11 BY MR. CARROLL:

12 Q Mr. Rice, could you please state your
13 full name, title, and employer.

14 A Raymond H. Rice, and I'm a principal
15 engineering geologist with URS Corporation in San
16 Francisco.

17 Q Thank you. Would you briefly summarize
18 your qualifications.

19 A I have a masters in geology, and a
20 bachelors in civil engineering and also in
21 geology. I'm registered as a geologist and
22 certified as an engineering geologist in
23 California. I have about 35 years of experience
24 in a variety of consultant capacities, including
25 site investigations, remedial investigations,

1 characterization of soil and groundwater problems,
2 including waste management issues.

3 Q And are you the same Ray Rice that
4 submitted prepared testimony in these proceedings
5 regarding the topic of waste management?

6 A Yes, that's correct.

7 MR. CARROLL: Before proceeding with
8 Mr. Rice's testimony, I'd like to make a couple of
9 corrections to exhibits that were identified in
10 his prepared testimony. In section 8.13 of the
11 application for certification, waste management,
12 on page 8.13-17 in table 8.13-3, the very bottom
13 row of that table identifies ammonia wastes. I'd
14 like to delete that entire row, and Mr. Rice will
15 explain the basis for that in his testimony.

16 Mr. Rice is also sponsoring a response
17 to data request from Southeast Alliance for
18 Environmental Justice, data request number 126.
19 In that response there is a table, 126-1, which is
20 similar to the table that I just referred to and
21 the very first row of that identifies ammonia
22 waste and I would like to simply eliminate that
23 entire row.

24 BY MR. CARROLL:

25 Q Mr. Rice, if I were to ask you the

1 questions contained in your prepared testimony
2 today under oath, would your answers be
3 essentially the same as what you stated in your
4 prepared testimony?

5 A Yes, they would.

6 Q And does that take into consideration
7 the corrections to the two exhibits that you're
8 sponsoring that I just made?

9 A That's correct.

10 Q And will there be any ammonia waste
11 associated with the construction or operation of
12 Potrero Unit Seven?

13 A No, there won't.

14 Q And am I correct that you are also
15 sponsoring a number of other exhibits identified
16 in your prepared testimony today?

17 A Yes.

18 Q And section 8.3 of the AFC pertaining to
19 waste management that you're sponsoring today, is
20 that as amended by the station A amendment,
21 Exhibit Number 15?

22 A I believe it's 8.13, yes, that's
23 correct.

24 Q 8.13, yes, I'm sorry if I misstated
25 that.

1 Could you provide a brief description of
2 the analysis that you completed and your
3 conclusions.

4 A Okay. We evaluated the impacts
5 associated with both generation of hazardous and
6 non-hazardous waste, associated with the
7 construction and operation of Unit Seven,
8 including the underground transmission cable
9 between the Potrero power plant and the Hunter's
10 Point station. We discussed source reduction
11 measures and also recycling measures that, when
12 implemented, will reduce impacts due to the
13 construction and operation of Unit Seven.

14 Through proper monitoring of hazardous
15 wastes which we will follow as well as proper
16 procedures for the handling, labeling, storage,
17 packaging, recordkeeping, and disposal of
18 hazardous wastes, we will prevent human health
19 impacts.

20 I conclude that the increase in the
21 disposal volume of both hazardous and non-
22 hazardous wastes from construction and operation
23 of Unit Seven will not significantly affect
24 available recycling facilities and landfill
25 capacities. And overall, given these proposed

1 waste management measures for generating hazardous
2 and non-hazardous wastes during construction and
3 operation of Unit Seven, the project will be less
4 than significant impact.

5 Q Thank you, and are you familiar with the
6 proposed conditions of certification set forth in
7 the CEC staff's final staff assessment?

8 A Yes, I am.

9 Q And do you have any objections to those
10 proposed conditions?

11 A I have one request that waste ten, which
12 deals with the storage of materials within the
13 BCDC jurisdiction and requests that they be
14 removed daily, I would request that that be
15 extended to a weekly period, because a daily seems
16 somewhat burdensome.

17 MR. WESTERFIELD: Mr. Rice, excuse me, I
18 didn't quite hear all of that. Did you say you're
19 requesting that the requirement to remove daily be
20 changed to weekly?

21 THE WITNESS: Correct, yes.

22 MR. WESTERFIELD: All right.

23 BY MR. CARROLL:

24 Q Thank you. Does that complete your
25 testimony today?

1 A Yes, it does.

2 MR. CARROLL: Ray Rice is now tendered
3 for cross--examination in the topic area of waste
4 management.

5 HEARING OFFICER VALKOSKY: I have a few
6 questions first.

7 Mr. Rice, will the same construction
8 practices and the waste disposal practices be
9 implemented regardless of which underground
10 transmission line route is ultimately used by
11 applicant?

12 THE WITNESS: Yes, as far as I'm aware.
13 There is only one under primary consideration, but
14 the same procedures would have to apply, no matter
15 where the actual route is.

16 HEARING OFFICER VALKOSKY: Okay, thank
17 you. Regarding your proposed change to condition
18 waste ten, do you know whether the requirement for
19 daily removal is something that was proposed by
20 staff, or is it, in fact, a requirement that BCDC
21 wants imposed?

22 THE WITNESS: I don't believe that it
23 was requested by BCDC, I believe it was a staff
24 requirement, but I'm not 100-percent sure.

25 HEARING OFFICER VALKOSKY: Okay, thank

1 you. Are you qualified to comment on the scope of
2 the remediation efforts which PG&E is obligated to
3 undertake?

4 THE WITNESS: No, I'm not. That's not
5 part of my responsibility.

6 HEARING OFFICER VALKOSKY: Do you have
7 any opinion on the acceptability of the various
8 elements of the City and County's proposed
9 condition of certification waste nine?

10 THE WITNESS: We're opposed to this in
11 its entirety.

12 HEARING OFFICER VALKOSKY: I'm sorry,
13 could you repeat that.

14 THE WITNESS: We're opposed to this in
15 its entirety.

16 HEARING OFFICER VALKOSKY: And your
17 reasons?

18 THE WITNESS: This places an undue
19 burden on the applicant for problems that were not
20 of their making, and a full remediation would
21 certainly not be required in order to accomplish
22 the work necessary for construction of Unit Seven.

23 HEARING OFFICER VALKOSKY: Okay, but
24 you're not prepared to testify to the particulars
25 on the remediation plan; is that correct?

1 THE WITNESS: Well, at this point I'm
2 not sure what the remediation plan is, if, in
3 fact, it has been developed by PG&E.

4 HEARING OFFICER VALKOSKY: Okay, thank
5 you.

6 COMMISSIONER PERNELL: Mr. Rice, is
7 there -- You're requesting rather than remove the
8 material daily, you'd like to do it weekly.

9 THE WITNESS: That's correct.

10 COMMISSIONER PERNELL: Have you
11 identified a site on the project to store it
12 weekly?

13 THE WITNESS: That has not been resolved
14 yet. That would be part of the process, once the
15 application is approved and design proceeds.

16 COMMISSIONER PERNELL: And so in terms
17 of safety of the workers around the proposed site
18 which haven't been identified, all of the safety
19 measures in accordance with all of the laws and
20 regulations of storing this stuff will be adhered
21 to?

22 THE WITNESS: Yes, sir, they will be.

23 COMMISSIONER PERNELL: Okay, and then on
24 your response to the hearing officer, one of
25 your -- you said that you disagree in its entirety

1 because it wasn't of your making? It wasn't the
2 applicant's fault? I didn't quite understand
3 that.

4 THE WITNESS: No. What I said was we
5 don't believe that the applicant should be
6 responsible for remediating issues that were
7 caused during the prior history of the property by
8 a prior owner.

9 MR. CARROLL: If I could interject, I
10 think applicant's objection is -- the basis for
11 the objection is more of a legal one, frankly,
12 than a technical one. As we see the proposed
13 waste condition nine, it shifts all liability for
14 remediation over the entirety of the site to
15 Mirant, and that liability currently, under law
16 and under agreement between PG&E and Mirant, does
17 not rest with Mirant.

18 So our primary objection to this is not
19 on a technical basis but on a legal basis.

20 COMMISSIONER PERNELL: And at what time
21 do you think you'll have that legal disagreement
22 worked out? I mean, the fact of the matter is,
23 the stuff has to be --

24 MR. CARROLL: Well, we think it is
25 worked out. PG&E retains liability for mediation

1 at the site.

2 COMMISSIONER PERNELL: And they've
3 agreed to that?

4 MR. CARROLL: Yes, they have.

5 HEARING OFFICER VALKOSKY: Last
6 question, Mr. Rice, referring to proposed
7 condition waste five at page 5.13-21 of staff's
8 testimony --

9 MR. CARROLL: Could you give us the page
10 number again, Mr. Valkosky?

11 HEARING OFFICER VALKOSKY: Yes, it's
12 5.13-21 of Exhibit Three. Basically, staff's
13 waste management testimony.

14 Okay. The last full sentence beginning,
15 "If, in the opinion of registered professional
16 engineer or geologist," etc., and what I'm
17 interested in is your understanding of how the
18 requirement for contacting representatives of the
19 San Francisco Department of Public Health,
20 Berkeley Office of DTSE, and the Regional Water
21 Quality Control Board for guidance and possible
22 oversight really works.

23 I mean, what is involved? This language
24 seems pretty broad to me.

25 THE WITNESS: It's a notification

1 requirement to the relevant agencies that
2 something has been, some anomalous condition has
3 been identified, and a consensus must be reached
4 as to how to proceed. So it's really a
5 notification process.

6 HEARING OFFICER VALKOSKY: Okay, and
7 when you say a consensus must be reached, how
8 is -- what is the process for reaching that
9 consensus?

10 THE WITNESS: The City and County of San
11 Francisco has responsibility for soil
12 contamination issues through the Maher ordinance,
13 and the Regional Water Quality Board has overall
14 site responsibility for total site issues.

15 I believe this refers to a soil incident
16 which then would come under the auspices of City
17 and County of San Francisco, and they would
18 presumably consult with the board to make sure
19 that their rulings are consistent with the board
20 approval.

21 HEARING OFFICER VALKOSKY: Consult with
22 the Regional Water Quality Control Board?

23 THE WITNESS: Yes, sir.

24 HEARING OFFICER VALKOSKY: And is this
25 essentially a technical staff level consultation,

1 or what I'm looking for is who makes the final
2 decision on what is or is not acceptable in this
3 context?

4 THE WITNESS: My understanding is that
5 would be the lead representative at the water
6 board, which is a technical person, approving a
7 decision made by City and County personnel.

8 HEARING OFFICER VALKOSKY: Okay, thank
9 you.

10 ADVISOR SMITH: A quick question. In
11 terms of the agreement with PG&E, is there a limit
12 to what PG&E has agreed to remediate at the site?

13 MR. CARROLL: If it's acceptable to the
14 parties, I'll explain the legal relationship
15 between the entities, as it relates to
16 contamination, though we will, when we get into
17 the soil and water section, present exhibits and
18 correspondence that confirm this relationship.

19 But the relationship in essence is that
20 PG&E retains liability for remediation of the
21 site. The Regional Water Quality Control Board
22 has been identified as the lead agency, and there
23 are ongoing discussions, details of which I'm not
24 familiar with, but I know that they're occurring
25 between PG&E and the Regional Board.

1 There probably are disputes over the
2 scope of the work that will be undertaken, we're
3 not really part of that, but under law and under
4 the agreement pursuant to which Mirant acquired
5 the Potrero site, PG&E retained all liability for
6 remediation of the site.

7 Now, if you heard Mr. Stone testify a
8 couple of days ago about 60,000 cubic yards, I
9 think it was, obviously when Mirant starts
10 construction of Unit Seven, the potential exists
11 for contaminated soils to be excavated, and we're
12 going to have to deal with those. So Mirant will
13 be responsible for handling any contaminated soils
14 that are excavated in connection with the
15 construction of Unit Seven. Those will be handled
16 in accordance with all applicable laws.

17 The 60,000 cubic yards that PG&E is on
18 the hook for reimbursing Mirant for the cost of is
19 dealing with up to 60,000 yards of contaminated
20 soils excavated in connection with Unit Seven.

21 ADVISOR SMITH: So just the soils under
22 the actual Unit Seven facilities.

23 MR. CARROLL: Right, right.

24 ADVISOR SMITH: Okay.

25 MR. CARROLL: And there's recognition

1 that, although PG&E retains overall liability for
2 remediation of the site that, as a practical
3 matter, once Mirant starts construction on Unit
4 Seven, if we get into contaminated soils, we can't
5 turn to PG&E and say, you know, deal with this.
6 Mirant will have to deal with it.

7 But we have a contractual arrangement
8 with PG&E that they'll reimburse us for dealing
9 with up to 60,000 cubic yards of that.

10 ADVISOR SMITH: And that's any
11 facilities, any new facilities related to Unit
12 Seven, not just strictly the turbines and --

13 MR. CARROLL: That's right.

14 ADVISOR SMITH: -- the cooling
15 structures, for example, if there were an
16 alternative cooling, etc.

17 MR. CARROLL: That's right.

18 ADVISOR SMITH: Okay.

19 HEARING OFFICER VALKOSKY: Would or does
20 PG&E's liability extend only to onshore or to
21 offshore contamination as well?

22 MR. CARROLL: I cannot answer that
23 question. I believe there is some dispute between
24 PG&E and the Regional Water Quality Control Board
25 as to that issue.

1 HEARING OFFICER VALKOSKY: And how will
2 that dispute be resolved?

3 MR. CARROLL: I assume that will be
4 resolved over time between PG&E and the Regional
5 Water Quality Control Board.

6 HEARING OFFICER VALKOSKY: Okay, but
7 under your understanding of the contractual
8 provision, the offshore elements are not included?

9 MR. CARROLL: Oh, you mean in the 60,000
10 cubic --

11 HEARING OFFICER VALKOSKY: Well, under
12 your agreement with PG&E, does that include any
13 liability on PG&E's part for offshore
14 contamination?

15 MR. CARROLL: The 60,000 cubic yard
16 agreement, or --

17 HEARING OFFICER VALKOSKY: Any agreement
18 you would have.

19 MR. CARROLL: No. Well, PG&E -- I don't
20 want to speak for PG&E, but my general
21 understanding of PG&E's position is they have not
22 accepted responsibility for offshore
23 contamination; however, in our agreement, we did
24 not accept it. So whatever is there, as far as
25 Mirant is concerned, PG&E retained. And Mirant

1 didn't pick up any of it.

2 Whether or not PG&E has responsibility
3 for offshore sedimentation is a matter of debate,
4 I guess, between the Regional Board and PG&E and
5 would be resolved between them. But in any event,
6 it didn't transfer to Mirant.

7 HEARING OFFICER VALKOSKY: Okay. And
8 insofar as the 60,000 cubic yard agreement, you
9 gave your understanding; is it fair to say that
10 PG&E agrees with your interpretation of it?

11 MR. CARROLL: Yes.

12 HEARING OFFICER VALKOSKY: Thank you.

13 COMMISSIONER PERNELL: I have just one
14 followup. This is kind of a general statement,
15 but this committee is going to be very interested
16 in, quite frankly, we don't care who cleans it up,
17 but we want to make sure that the site, the
18 contamination on the site is handled in the proper
19 manner.

20 Now, if PG&E doesn't do it, it falls to
21 Mirant, as far as I'm concerned. So I would
22 suggest that that gets worked out. Because
23 regardless of who has responsibility, the fact of
24 the matter is the site, remediation of the site
25 has to be done. You can't have this stuff laying

1 around and someone saying, well, this is not mine,
2 this is his, etc.

3 So the committee wants to know that
4 whatever contamination is out there that it gets
5 cleaned up, and somebody has responsibility.

6 MR. CARROLL: And let me be clear about
7 Mirant's commitment. Mirant is committed to
8 undertaking any remediation that is necessary for
9 the construction of Unit Seven, and we accept all
10 responsibility for that. We have an agreement
11 with PG&E --

12 COMMISSIONER PERNELL: And that's -- I'm
13 sorry, that's disposal as well.

14 MR. CARROLL: Yes. Any remediation,
15 disposal, handling of contaminated soils or
16 sediments that needs to be done in connection with
17 the construction of Unit Seven, Mirant is
18 responsible for. And frankly, the fact that we
19 have an agreement with PG&E for 60,000 cubic yards
20 of that probably isn't a matter that you all need
21 to be concerned about, that's a financial issue,
22 but Mirant accepts the responsibility for
23 everything related to the construction of Unit
24 Seven.

25 Now, what we don't accept, and the basis

1 of our objection to some of the changes of nine,
2 is that in areas completely unrelated to the
3 construction of Unit Seven we're not going to pick
4 up all of PG&E's existing liability for that
5 cleanup. So everything related to the project in
6 front of this Commission we'll take responsibility
7 for, but we're not going to accept PG&E's
8 liability over the entirety of the site.

9 HEARING OFFICER VALKOSKY: And when you
10 say everything related to the construction of Unit
11 Seven, you're including everything both onshore
12 and offshore?

13 MR. CARROLL: Yes, sir.

14 HEARING OFFICER VALKOSKY: Thank you.

15 MS. MINOR: Is it appropriate to ask
16 Mike further clarifying questions at this point?
17 Maybe you can clarify how we're going to
18 proceed --

19 HEARING OFFICER VALKOSKY: Can we go off
20 the record.

21 (Brief recess.)

22 HEARING OFFICER VALKOSKY: While off the
23 record we discussed certain procedural items,
24 including the scope of the testimony. The result
25 was that the parties have achieved a better

1 understanding.

2 And with that, cross-examination,
3 Mr. Westerfield?

4 MR. WESTERFIELD: No cross-examination
5 by staff.

6 HEARING OFFICER VALKOSKY: Ms. Minor?

7 MS. MINOR: Okay.

8 Good morning.

9 THE WITNESS: Good morning.

10 CROSS-EXAMINATION

11 BY MS. MINOR:

12 Q If I could direct you to page 8.13-3 of
13 the AFC --

14 A Yes.

15 Q -- there is an indication that three
16 months after commencement of construction, six
17 structures are going to be demolished. What six
18 structures are those?

19 A These would be the structures in the
20 station A complex.

21 Q Okay, and are there six of those? I
22 couldn't count six; that's why I was wondering
23 what the sixth structure was. Are there six?

24 A I can account for five, certainly. The
25 sixth --

1 Q Yes, I could account for five as well.

2 A Yes, all the structures associated with
3 station A, which is the main building, the meter
4 house, the compressor building, the office, and
5 then the old pump house that's on 23rd Street,
6 which is five.

7 Q Okay, that's five. Do you know where we
8 would look to find out what the sixth one is? Is
9 it someplace in the AFC?

10 A This could be a typo. If we can only
11 account for five, I'm not sure.

12 Q Okay. Do you know who at Mirant would
13 know? How would we verify if that six should be
14 five?

15 A We'll find out. I'm not sure who the
16 best person would be.

17 MS. MINOR: Mr. Carroll, is that a
18 question for either Mr. Stone or Ms. Zambito?

19 MR. CARROLL: What I would suggest is if
20 you can continue with your cross examination
21 without having that piece of information to do
22 that, and I think over the course of your cross-
23 examination we'll probably find the answer.

24 MS. MINOR: Okay.

25 MR. CARROLL: I'm going to look in the

1 cultural resources section right now.

2 MS. MINOR: Okay, thank you.

3 BY MS. MINOR:

4 Q And, Mr. Rice, you have previously
5 indicated that you don't have current information
6 on the status of the site remediation plan?

7 A That's correct.

8 Q Okay. And do you have any more current
9 information about the time frame for the
10 remediation?

11 A No, I do not.

12 Q Do you have any understanding as to when
13 the time frame for the remediation would be set?

14 A No, I don't. That's something that
15 presumably is being worked out between PG&E and
16 the Water Board.

17 Q Okay. Do you have any specific
18 knowledge about the site assessment documents that
19 are referenced in 8.13? If I could direct you
20 specifically to the bottom of 8.13-1, there is a
21 reference to a phase one site assessment?

22 A Yes. This has been reproduced in its
23 entirety as Appendix M to the AFC.

24 Q And do you have firsthand knowledge
25 about the specifics of those documents?

1 A I've reviewed them. I didn't prepare
2 them.

3 Q Okay. I'm going to ask you a couple of
4 questions about Exhibit M, if I can find it.

5 A Appendix M?

6 Q Yes, Appendix M to the AFC. And if I
7 can't find it, I won't ask you any questions about
8 it. I'm sorry, I'm hunting for my copy of
9 Appendix M.

10 MR. WESTERFIELD: Jackie, we may not all
11 have Appendix M handy, so when you do ask
12 questions about it, could you state explicitly
13 what part of Appendix M you're asking so that we
14 can --

15 MS. MINOR: I'm sorry, I don't appear to
16 have my copy of it either.

17 Can we go off the record for just a
18 minute?

19 HEARING OFFICER VALKOSKY: Off the
20 record.

21 (Brief recess.)

22 BY MS. MINOR:

23 Q If you would turn to the table at page
24 8.13-3.

25 A Yes.

1 Q It is not clear to me whether the list
2 that's on page 8.13-3 as well as table 8.13-3,
3 whether those lists include hazardous waste
4 generated by the remediation. Would you clarify
5 that. Do you follow my question?

6 A I believe so. Table 8.13-3 does not
7 include soils specifically that would be generated
8 during construction.

9 Q If you look at the CEC staff waste
10 management testimony, page 5.13-4 through -5,
11 there is a list of contaminants that have been
12 identified --

13 MR. CARROLL: I'm sorry, Jackie, page
14 number again?

15 MS. MINOR: 5.13-4.

16 MR. CARROLL: 5.13-4?

17 MS. MINOR: Mm-hmm.

18 MR. CARROLL: Okay.

19 BY MS. MINOR:

20 Q And it's the section that's entitled
21 Phase Two ESA.

22 A Yes.

23 Q The bullets represent either the
24 location or types of contaminants that have been
25 identified, that were identified in the phase two

1 assessment.

2 A That's correct.

3 Q And what I'm trying to determine is
4 whether or not the contaminants that are listed
5 under the phase two ESA section of the FSA are
6 also identified by Mirant in its list of hazardous
7 waste in section 8.13 of the AFC.

8 A As I indicated, the materials resulting
9 from construction activities, excavation of the
10 site are not included in this table 8.13-3.

11 Q Is there a section of the AFC that
12 identifies, where there is a chart that identifies
13 contaminants that have been identified as a part
14 of the various site assessments?

15 A Yes.

16 Q Do you know -- Can you point me to it?

17 A Well, at the very least it's in Appendix
18 D of the soil management and implementation plan.

19 Q Appendix D, okay. If you would go to
20 page 5.13-7 of the staff's waste management
21 testimony.

22 A Yes.

23 Q It's the section that's entitled
24 Offshore Sediment Characterization July 2000.

25 A Yes.

1 Q The last sentence of the second
2 paragraph in that section, "Two primary areas were
3 identified that were impacted by contamination."

4 A Yes.

5 Q Do you have an opinion as to why these
6 are the two areas that appear to have the highest
7 levels of contamination?

8 A I really was not involved in the
9 offshore aspects of the project, so I wouldn't
10 want to speculate.

11 Q Okay. Do you know who I should ask that
12 question to?

13 A That would certainly be covered under
14 soil and water resources hearings.

15 MR. CARROLL: Mr. Ian Austin will be one
16 of those panelists. He was primarily responsible
17 for the offshore sediment characterization.

18 MS. MINOR: Okay.

19 COMMISSIONER PERNELL: Mr. who?

20 MR. CARROLL: Ian Austin, actually
21 Dr. Ian Austin.

22 HEARING OFFICER VALKOSKY: Mr. Rice,
23 could you move the microphone a little closer.
24 I'm having some difficulty hearing.

25 THE WITNESS: Sure.

1 HEARING OFFICER VALKOSKY: Thank you.

2 THE WITNESS: Okay.

3 MS. MINOR: I think I've found the
4 answer to the question of what the sixth building
5 is.

6 MR. CARROLL: As did I.

7 MS. MINOR: Okay.

8 BY MS. MINOR:

9 Q There is a prefab metal shop building
10 located west of the meter house and compressor
11 house that apparently Mirant also intends to
12 demolish.

13 A I see, yes.

14 Q Okay.

15 COMMISSIONER PERNELL: You can scratch
16 that one off your list.

17 THE WITNESS: It's not historic, by any
18 means.

19 HEARING OFFICER VALKOSKY: Although it
20 may be by the time we get through here.

21 (Laughter.)

22 MS. MINOR: Okay.

23 BY MS. MINOR:

24 Q You know, let me just look quickly at my
25 notes. I think most of my other questions will

1 carry over to other witnesses, Mr. Rice. Let me
2 look.

3 MS. MINOR: That's it for my questions.
4 Thank you.

5 THE WITNESS: You're welcome.

6 HEARING OFFICER VALKOSKY: Mr. Rostov?

7 MR. ROSTOV: Yes.

8 Good morning, Mr. Rice.

9 CROSS-EXAMINATION

10 BY MR. ROSTOV:

11 Q On page, replacement page 8.13-3 of the
12 AFC, in fact, it's Ms. Minor pointed to --

13 A Yes.

14 Q -- it says, "The demolition of these six
15 structures will generate approximately 18,000
16 cubic yards of concrete and brick debris."

17 A Yes.

18 Q Okay. Is that the same number as the
19 numbers in response to the CEC data request number
20 140 in table 140-2?

21 A That is correct, although table 140-2
22 indicates a range of both brick and concrete.

23 Q Right, so table 140-2 says concrete
24 debris is 6- to 8,000 yards, and brick debris
25 8,000 to 10,000 yards, so they took the maximums?

1 A Correct.

2 Q And said 18,000, okay. And then the
3 next paragraph it says, "Approximately 100 tons of
4 excess concrete will be generated during Unit
5 Seven construction." What is this 100 tons, is
6 that different than the 18,000 cubic yards, or is
7 it that just saying it in a different way?

8 A No, it's different. And this would
9 relate to overpours during construction, when they
10 have to clean out the trucks and excess material
11 developed during the construction process -- wet
12 concrete as opposed to demolition of existing
13 buildings.

14 Q Okay, and then in the next sentence you
15 say as much of the concrete as possible you
16 recycle by using this, so what do you mean by
17 recycle? I mean, I guess you're just -- you
18 accidentally overfill it and then you're going to
19 try to move it somewhere else real fast?

20 A Perhaps reused would be a better term,
21 and it wouldn't necessarily have to be used in its
22 wet form. It could be broken up and recycled in
23 that sense.

24 Q When you mean broken up, do you mean
25 crushed?

1 A Yes, that's one way.

2 Q Okay. So according to the FSA -- Let me
3 just give you the page -- and according to
4 Ms. Zambito, who testified during the project
5 description, Mirant may be planning on doing on-
6 site recycling of the concrete debris and the
7 brick debris; is that true? On-site crushing?

8 A I believe that's under consideration,
9 yes.

10 Q Have you decided yet?

11 A I don't know the answer to that.

12 Q Okay. But according to the FSA on page
13 5.13-8, it essentially repeats those first numbers
14 6- to 8,000 yards of concrete debris and 8- to
15 10,000 yards of brick debris?

16 A Yes.

17 Q And then it says it will be either
18 crushed on site for recycling as fill material or
19 transported to a recycling plant in Half Moon Bay;
20 is that correct?

21 A Yes, that's correct.

22 Q Okay, but you're testifying today that
23 there could be another -- What was that?

24 A On-site reuse?

25 Q -- reuse of approximately 100 tons of

1 excess concrete generated during the construction;
2 is that true?

3 A There are 100 tons of excess concrete
4 estimated, and how it is disposed of could happen
5 any number of ways.

6 Q Is that discussed in the AFC or in your
7 testimony?

8 A No more than is indicated here, that I'm
9 aware of.

10 Q Okay. So just for me to be clear, you
11 could end up doing on-site crushing of this 100
12 tons of concrete as well.

13 A That is true, or certainly a portion of
14 it.

15 Q Okay.

16 MR. ROSTOV: I think those are all of my
17 questions.

18 HEARING OFFICER VALKOSKY: Thank you.

19 Mr. Ramo.

20 CROSS-EXAMINATION

21 BY MR. RAMO:

22 Q Mr. Rice, could I have you turn to page
23 one of your prepared testimony.

24 A Yes.

25 Q And in response to question four, you

1 state in part, at lines 27 and 28, "The analysis
2 evaluates potential impacts of non-hazardous and
3 hazardous waste associated with the construction
4 and operation of the Unit Seven project."

5 Do you see that response?

6 A Yes, I do.

7 Q Is it fair to say, based on your
8 counsel's comments, that that should be limited to
9 onshore construction and operation activities?

10 A Yes, sir.

11 Q I also gather from your previous
12 answers -- Well, let me start this way. You're
13 generally familiar that there was a sediment
14 contamination analysis done at the site.

15 A Yes.

16 Q And are you generally aware that the
17 analysis located spots where there were elevated
18 levels of contaminants?

19 A Yes.

20 Q But I gather that you didn't participate
21 in attempting to identify potential sources of
22 that contamination; is that correct?

23 A That's correct.

24 Q So as part of developing your waste
25 management protocols, you didn't consider whether

1 activities on site might have caused offshore
2 contamination.

3 A Not directly, no.

4 MR. CARROLL: I'm sorry, Mr. Ramo, to
5 interrupt you. I wanted to ask clarification of
6 your question. Was your question might have --
7 Are you talking about past activities or future
8 activities?

9 MR. RAMO: I was referring to past
10 activities that might have caused contamination
11 off shore.

12 BY MR. RAMO:

13 Q Does that change your answer?

14 A No, it doesn't.

15 Q Okay. So to the extent that you
16 referred to Appendix D, which is the site
17 mitigation plan, or Appendix M, the phase one
18 evaluation, those are referred -- those references
19 should not include any discussion of sediment
20 contamination in those topics; is that correct?

21 A We're talking about Appendix D and
22 Appendix M. I don't believe Appendix M, the phase
23 one, had any comment on offshore sediments. And
24 Appendix D, which was the site mitigation plan, we
25 drew upon available information for a discussion

1 of past activities and constituents identified on
2 site for the compliance with Maher ordinance
3 ultimately.

4 And I don't recall whether -- I don't
5 believe that offshore information was factored
6 into that document. I don't believe so.

7 Q Let me refer you to page, and this is
8 page 5.13-9 of the final staff assessment.

9 MS. MINOR: Excuse me, what is the page
10 number again?

11 MR. RAMO: I'm sorry, it's 5.13-9, which
12 is Mr. Rainer's testimony.

13 MS. MINOR: Okay.

14 BY MR. RAMO:

15 Q And if you see in the middle of the
16 page, it discusses the main mitigation objectives
17 of the SMIP, and would you agree the SMIP refers
18 to Appendix D?

19 A Yes.

20 Q And the third bullet indicates that one
21 of the objectives, and I understand this is the
22 staff testimony, includes management, appropriate
23 reuse, and/or disposal of sediments excavated
24 during construction.

25 Is it your view that that portion of

1 their testimony is incorrect?

2 A I think there is perhaps some confusion
3 and perhaps clarification is required. The SMIP
4 in Appendix D refers to onshore construction.
5 Now, that would include the intake structure, the
6 onshore portion of it. And so to that extent,
7 whatever materials would be excavated within the
8 cofferdam for the intake structure, we're
9 considering that an onshore location where they
10 called them sediments. They're clearly not the
11 offshore sediments along the discharge pipe and
12 the collection pipe, so perhaps it's semantics.

13 Q That's helpful. And so I gather the
14 extent of your testimony in that area simply has
15 to do with the materials excavated and how they're
16 disposed of or handled; is that correct?

17 A In this document, that's correct.

18 Q Okay. And part of the construction at
19 the site will require excavation of soil; is that
20 correct?

21 A That's correct.

22 Q And let me have you turn to the AFC at
23 8.13-3. And specifically, the first paragraph
24 under hazardous waste.

25 MR. WESTERFIELD: Alan, I'm sorry, it's

1 my turn to be stuck.

2 MR. RAMO: Okay. 8.13-3.

3 MR. WESTERFIELD: Okay.

4 BY MR. RAMO:

5 Q And would it be fair to summarize that
6 first paragraph under hazardous waste as
7 indicating at the time this was prepared, you
8 believed 46 percent of the soil excavated will be
9 hazardous?

10 A No, that's not correct. What this
11 basically says is that at the time of the phase
12 two work completed by Fluor Daniel, another
13 consultant, they made an estimate of degree of
14 contamination but have had no reference to Unit
15 Seven because this is a project that evolved after
16 the phase two work was completed.

17 So his reference is to another
18 consultant's estimate made several years prior to
19 the development of the Unit Seven project.

20 Q Okay, I appreciate that. So at this
21 point, when this was prepared, is it fair to say
22 you were indicating that some contaminated soil
23 that would require disposal would likely be
24 excavated; is that correct?

25 A That's correct.

1 Q And you were noting Fluor Daniel's
2 estimate in terms of the soil at the site, that
3 approximately 46 percent of the soil, according to
4 Fluor Daniel, at the site is hazardous; is that
5 correct?

6 A That is what Fluor Daniel said, correct.

7 Q Okay, and you later came to a different
8 conclusion regarding the soil actually being
9 excavated; isn't that correct?

10 A When we looked at the proposed
11 construction and put together the Appendix D, we
12 had a better idea of what actually would be
13 occurring, correct.

14 Q In fact, you came to the conclusion,
15 isn't it correct, that most of the material to be
16 excavated during construction of proposed Unit
17 Seven will be classified as California hazardous
18 waste?

19 A Yes, that was our assumption.

20 Q And let me have you look at Appendix M,
21 which is phase one, and specifically page 6-3, I
22 believe.

23 MR. CARROLL: We do not have a copy of
24 Appendix M here, so we may have to pass it down.

25 BY MR. RAMO:

1 Q Now, for purposes of the question, let
2 me hand you an excerpt from Appendix M, and
3 specifically what you'll see is that at the bottom
4 of 6-3 I've put an asterisk next to paragraph 14.

5 A Yes, sir.

6 Q And just so everybody knows where we're
7 talking about, could you read paragraph 14 into
8 the record.

9 A "According to Mr. Virdee and the Vista
10 database, a sheen on the water was visible just
11 east of the plant in the San Francisco Bay on two
12 occasions in 1994. This sheen was believed to
13 have been caused by cracks or holes in the sheet
14 piling along the sea wall, which allowed for
15 contaminants in the soil or groundwater from the
16 plant to flow into the bay. The sheet piling has
17 been repaired, but the contamination that caused
18 the sheen has not been remediated."

19 Q Now, did you do any followup to
20 determine whether the source of that sheen was
21 remediated?

22 A I did not, no.

23 Q So this place is basically oozing with
24 hazardous waste; isn't that correct?

25 MR. CARROLL: I object to the phrasing

1 of that question.

2 HEARING OFFICER VALKOSKY: Could you
3 restate the question, please, Mr. Ramo.

4 BY MR. RAMO:

5 Q Well, it appears when a hole is punched
6 into the sea wall, contamination flows from the
7 site; isn't that correct?

8 A This says that a sheen was believed to
9 have been caused by cracks or holes in the sheet
10 piling, the sheen meaning a superficial layer.
11 There is no indication of the volume or
12 significance of this in this statement.

13 Q And you have no basis to believe that
14 the same thing wouldn't occur again if there was a
15 crack or hole in the sea wall; is that correct?

16 A Well, depending upon the circumstances,
17 there's a lot of sea wall out there, and it
18 wouldn't necessarily imply that every hole would
19 yield a sheen.

20 Q But you don't know that, do you?

21 A I don't know that.

22 Q Okay. So the soil that's mostly
23 hazardous will be stockpiled, is that correct,
24 during construction?

25 A That is correct.

1 Q And how high will the stockpiles be?

2 A That has not been determined yet. That
3 will be developed as the process proceeds.

4 Q So as far as you know, no condition and
5 no internal company proposal limits the height of
6 the stockpiles.

7 A I'm not aware of any restrictions on
8 stockpile height, but that, as I say, will be
9 developed when we put together the plan, so --

10 Q No restriction from any source that
11 you're aware of.

12 A Not that I'm aware of.

13 Q How long will those hazardous stockpiles
14 be allowed to be at the site?

15 A The material will be covered and
16 protected, using best management practices, and
17 moved off the site as expeditiously as possible.
18 I don't have a time frame at this point.

19 Q So currently, as far as you know, there
20 are no restrictions from the staff's conditions or
21 in the proposal by the company that would require
22 these unlimited high stockpiles of hazardous soil
23 to be removed; is that correct?

24 A I would have to review the conditions of
25 certification to answer that.

1 Q As of right this moment, you're not
2 aware of that.

3 A Correct.

4 Q Now, you mentioned that there would be
5 best management practices. One of the areas of
6 concern in your analysis was stormwater; is that
7 correct?

8 A Yes.

9 Q And why is stormwater a concern?

10 A The control of stormwater is desirable
11 in order to limit any hazardous constituents from
12 reaching the waters of the state.

13 Q And is it correct that your approach
14 to -- And one of the techniques, one of the
15 practices you discussed is bermal; is that
16 correct?

17 A I'm sorry?

18 Q One of the approaches, one of the best
19 management practices that you're proposing for
20 controlling stormwater runoff is berming around
21 the stockpiles; is that correct?

22 A That's correct.

23 Q Would it be fair to say that a berm is
24 like a curb?

25 A That's a general definition, that's

1 correct.

2 Q And your proposal includes using soil as
3 a berm; is that correct?

4 A Yes.

5 Q And you're also proposing to use bales
6 of hay?

7 A That's correct.

8 Q Okay. Now, does the Regional Water
9 Quality Control Board have any kind of model best
10 management practices that includes using dirt to
11 control stormwater runoff from stockpile of soil?

12 A I'm not sure. If the berm is lined,
13 however, it then is covered and protected. It is
14 not necessarily raw dirt underlying a lining.

15 Q Okay. My question was are you aware of
16 the Regional Water Quality Control Board having
17 any kind of model best management practice that
18 calls for soil being used as a berm around a
19 stockpile of soil?

20 A I'm not sure about that.

21 Q Are you aware of any regulatory agency
22 that has approved as a model best management
23 practice using dirt as a berm around stockpiles of
24 soil?

25 A I'm not sure of that.

1 Q Are you aware of any regulatory agency
2 using bales of hay to control stormwater runoff
3 off a stockpile of soil?

4 A Same response.

5 Q Can you explain how hay is going to stop
6 a San Francisco rainstorm from causing hazardous
7 soil to run off these stockpiles and into the bay?

8 A Hay acts as a retardant to flow of
9 fluids and sediment and slows it down, and if
10 properly contained and directed, it will be
11 effective.

12 Q Can hay get saturated?

13 A Certainly.

14 Q Certainly. Do you know how long it
15 would take in a steady rainstorm for hay to be
16 saturated?

17 A I have no idea.

18 Q From your perspective as an
19 environmental consultant, would there be any
20 problem if this project were required to have
21 berms that were concrete or asphalt?

22 A That's a cost issue, and if that
23 function can be handled by other means, we would
24 certainly look at other less expensive means if
25 available.

1 Q Now, we had some discussion regarding
2 the staff's conditions and the City's conditions
3 for certification, and I wanted to ask you about
4 the staff's condition waste nine at 5.13-22.

5 A Yes.

6 Q And is it correct that to your
7 knowledge, does Mirant object to that condition
8 for the same reasons that it objected to the
9 City's conditions?

10 A Yes, I believe so.

11 Q Now, would you agree to the site
12 mitigation plan that's in Appendix D? That's not
13 a remedial action plan, is it?

14 A That's correct.

15 Q And as a professional in the field, is
16 it your opinion that this site has been fully
17 characterized at this point so that a remedial
18 action plan can be developed?

19 A No, I don't believe so.

20 Q And until a site is fully characterized,
21 it's difficult to know whether construction
22 activity will interfere with a remedial action
23 plan; isn't it?

24 A That's not entirely true. If the
25 construction activity is well defined in space on

1 the site and that area is adequately
2 characterized, then construction should be able to
3 proceed without full knowledge of the total site,
4 in my opinion.

5 Q Is it your opinion that the site where
6 excavation has occurred has been sufficiently
7 characterized at this point in time?

8 A I'm sorry, you mean the area that will
9 be excavated for Unit Seven?

10 Q Yes.

11 A No. In fact, we have included in
12 responses to the City an additional program to
13 characterize areas where there are gaps in the
14 data for the construction of Unit Seven.

15 Q So until the areas to be constructed --
16 Excuse me. Until the areas where construction has
17 occurred is fully characterized, one cannot make a
18 determination that construction will interfere
19 with remediation, can you?

20 A No, I don't believe that's true. As I
21 said, I believe if you are characterizing the
22 construction area that you can, if it's properly
23 characterized, conduct the construction prior to
24 full characterization of the site.

25 Q Okay. Maybe I wasn't clear and maybe I

1 stated -- I understand your distinction. You
2 would agree that before construction has occurred,
3 the area of construction must be fully
4 characterized.

5 A Must be adequately characterized to
6 allow the construction to proceed.

7 Q The construction to proceed. But at
8 this point, you don't know what activities on site
9 cause contamination in the bay, do you?

10 A There is --

11 MR. CARROLL: I'm sorry, is the question
12 cause contamination of the Bay or caused? I would
13 just ask, Mr. Ramo, that you be clear about
14 whether we're talking about past activities that
15 caused existing remediation or whether we're
16 talking about future activities associated with
17 the construction of Unit Seven that could cause --
18 because we're jumping back and forth and I just
19 want to make sure that the questions are clear.

20 MR. RAMO: Okay. I was referring to
21 past activities.

22 BY MR. RAMO:

23 Q Right now, you don't know what past
24 activities caused contamination at the site.

25 A We know a variety of past, yes, we

1 certainly do. But you're drawing a distinction
2 between on-site contamination and off-site, and
3 I've already said I haven't perceived that.

4 Q Okay. So you wouldn't have a problem
5 with a condition that required full
6 characterization of the site to be constructed
7 prior to allowing construction in that area; is
8 that correct?

9 A I would use the word "adequate," if
10 that's synonymous with "full." Then if I
11 understand your question correctly, we would want
12 adequate characterization of the area to be
13 constructed to occur prior to the construction,
14 yes.

15 Q Would your answer be the same if I
16 defined "adequate" as sufficient to allow a
17 remedial action plan to be determined?

18 A We're talking about different things
19 here. What I'm talking about is construction of
20 Unit Seven. I believe when you say remedial
21 action plan, I'm assuming you're talking about a
22 site-wide program. And, as I've said, I don't
23 believe that characterization of the entire site
24 for a remedial action, a site-wide remedial action
25 plan is necessary prior to the construction of

1 Unit Seven provided that the area affected by Unit
2 Seven construction is characterized.

3 Q Until you know what causes contamination
4 offshore and whether those kinds of sources are
5 ongoing and requires measures to be taken within
6 the construction area, how can you begin
7 construction?

8 A As I've said, if we're talking about
9 characterizing construction area, which we are,
10 then that information should be available. It
11 should allow successful construction to occur.

12 Q Is it your belief that the sources for
13 the offshore contamination have been fully
14 characterized?

15 A I'm not sure. I don't believe so.

16 Q So we don't know if remediation of those
17 sources might interfere with construction, do we?

18 A Construction can be structured in a way
19 to be compatible with a variety of remediation
20 alternatives. As far as I know, a remediation
21 plan has not yet been developed.

22 Q And your basis for presuming that is
23 what?

24 A I have not yet seen anything documenting
25 it.

1 Q Okay. Now, in terms of waste number
2 nine, where it says, "If PG&E cannot fulfill its
3 obligations so that all project-related
4 remediation requirements are completed, Mirant
5 will assume that," and your problem, you consider
6 that an undue burden to the applicant?

7 MR. CARROLL: Let me just interject
8 here. We did not have a chance to examine the
9 staff's witnesses on this topic, including this
10 condition. We have some questions about the
11 intended scope of waste nine.

12 So we have some difficulty in responding
13 to it, because we're not exactly sure what it
14 means, but with that --

15 THE WITNESS: I'm sorry, your question
16 was?

17 BY MR. RAMO:

18 Q Your objection to waste nine, as I
19 understood your prior testimony, was that it
20 created an -- Excuse me. Your objections to the
21 City's conditions, which to some extent seem
22 similar to this, is that it created an undue
23 burden to the applicant. I wondered if you had
24 the same objection to waste nine.

25 MR. CARROLL: I think the answer depends

1 on what the staff means by the phrase "proposed
2 project site." And that's the ambiguity that we
3 have that we haven't been able to clear up because
4 we haven't been able to cross-examine --

5 HEARING OFFICER VALKOSKY: So you will
6 at the time you examine Mr. Ringer and determine
7 whether or not you have a problem with those
8 numbers, right?

9 MR. CARROLL: Yes.

10 HEARING OFFICER VALKOSKY: All right.

11 MR. CARROLL: I would suggest, Mr. Ramo,
12 if you want to phrase your question in terms of an
13 assumption about what proposed project site means,
14 then the witness could probably answer your
15 question.

16 In other words, if we assume that
17 "proposed project site" means the area of
18 construction of Unit Seven --

19 BY MR. RAMO:

20 Q If we limit "project site" to the area
21 of construction, do you have a problem with waste
22 nine?

23 A No, I don't believe so.

24 Q Wouldn't it be a lot more
25 straightforward to just require the site to be

1 adequately characterized, as you've defined
2 "adequate," to develop a remedial action plan and
3 implement the remedial action plan, rather than
4 trying to push construction so that it's happening
5 simultaneously with the development of a remedial
6 action plan? Wouldn't that be a better
7 environmental way to manage this site?

8 A That's certainly one way of doing it,
9 and that's reasonable. But if the overall
10 remediation strategy is not resolved in a timely
11 manner, I don't believe the applicant should be
12 prohibited from proceeding with his project,
13 waiting for some global remediation plan that may
14 take quite a long time to be, one, to be
15 developed, and two, to be implemented.

16 Q Okay, thank you.

17 MR. RAMO: I have no further questions.

18 HEARING OFFICER VALKOSKY: Just before
19 we get to redirect --

20 Mr. Rice, will methods in management
21 practices for handling and storage of soil,
22 including the soil stockpiling be specified in the
23 site mitigation and implementation plan?

24 THE WITNESS: Yes, they will.

25 HEARING OFFICER VALKOSKY: Okay, and

1 will you just refresh as to who, and I assume
2 we're talking about agencies, will assess the
3 efficiency of these practices?

4 THE WITNESS: Well, the primary
5 responsibility is City and County Department of
6 Public Health.

7 HEARING OFFICER VALKOSKY: Okay, and
8 will they be working in conjunction with agencies
9 such as DTSE, and --

10 THE WITNESS: DTSE and the Regional
11 Water Board, correct.

12 HEARING OFFICER VALKOSKY: Thank you.
13 And when will be a remediation plan be developed,
14 at what point?

15 THE WITNESS: And you're speaking of the
16 remediation, the agreement between PG&E and the
17 Water Board? I don't know. I don't know the
18 status of that.

19 HEARING OFFICER VALKOSKY: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. CARROLL:

22 Q Mr. Rice, just a couple of questions.
23 One relates to one of the questions that
24 Mr. Valkosky just asked. In the event that during
25 construction you determine that a proposed method

1 of containing soil, whether it be soil berms or
2 hay bales was not adequate to contain the soil on
3 site, what would you do at that point?

4 A We would make the appropriate
5 modifications to make it acceptable.

6 Q And in your opinion, is there any reason
7 that construction of Unit Seven and remediation of
8 the overall site cannot be coordinated and
9 accomplished in a compatible way?

10 A No, that shouldn't be possible.

11 Q Okay, thank you.

12 MR. CARROLL: No further questions.

13 HEARING OFFICER VALKOSKY: Recross,
14 Mr. Westerfield?

15 MR. WESTERFIELD: Yes, thank you.

16 RE-CROSS-EXAMINATION

17 BY MR. WESTERFIELD:

18 Q Mr. Rice, I just have a few questions in
19 followup on the line of questioning by Mr. Ramo.

20 What additional work needs to be done to
21 fully characterize the construction site prior to
22 construction?

23 A We proposed, I don't know the actual
24 number, but a number of additional borings along
25 the inlet conduit and in the power block area, as

1 well as in the intake structure area, the onshore
2 portion of the intake structure area with
3 appropriate analyses of various constituents so
4 that we have a full picture of what will be
5 excavated during the Unit Seven construction.

6 Q Are these borings in order to sample for
7 soil contamination only or for water
8 contamination?

9 A The intent is for soil. We would also
10 be able to obtain water samples as well. I don't
11 recall if that was specified, however.

12 Q Okay. Do you know if there are any
13 plans to put in monitoring wells as part of your
14 characterization efforts?

15 A I don't believe that any of those would
16 result in monitoring wells because they
17 specifically would be in areas where excavation
18 would be occurring.

19 Q And approximately how many borings?

20 A I believe the number is about 12.

21 Q Now, I guess my question is -- Let me
22 just ask it this way. Has DTSE required this
23 work?

24 A Not to my knowledge, no.

25 MR. CARROLL: I'm sorry, "this work"

1 being --

2 MR. WESTERFIELD: What he just
3 described.

4 MR. CARROLL: Okay.

5 BY MR. WESTERFIELD:

6 Q Do you know if DTSE is requesting or
7 requiring any additional characterization prior to
8 site construction?

9 A I'm not aware that they are.

10 Q Do you know if they are satisfied with
11 the degree of characterization?

12 A They're certainly aware of what has been
13 accomplished, and I believe they're aware of the
14 proposed additional work, because the City has I
15 believe involved them in the review. And I'm not
16 aware that they've had any, taken any exception to
17 that.

18 Q All right, thank you. And now, what
19 about the Regional Water Quality Control Board?
20 Have they required this work?

21 A No.

22 Q Do you know if they are satisfied with
23 the degree of characterization that you propose
24 prior to construction?

25 A I believe the same thing applies, in

1 that they have reviewed the submittals, and, with
2 the City taking the lead on this, I believe
3 they're in agreement with it.

4 Q Okay. So can I take it from your last
5 answer that it is the City who is requiring this
6 additional work?

7 A Yes. This is to fill out the terms of
8 the Maher ordinance.

9 Q I see, okay. And it is under that
10 authority, as far as you know, that the City is
11 requiring the additional characterization?

12 A That's correct.

13 Q Are there any agreements with the City
14 in connection with this work?

15 A I'm not sure I understand. Agreements
16 with --

17 Q The City?

18 A Between Mirant and the City?

19 Q Yes.

20 A Only that this work has been -- Rather,
21 the proposal has been submitted in response to
22 data requests and approved. Whether there is a
23 written agreement, that I don't know.

24 Q Okay.

25 MR. WESTERFIELD: Thank you, that's all

1 I have.

2 HEARING OFFICER VALKOSKY: Ms. Minor?

3 MS. MINOR: Yes, just a couple of
4 clarifying points.

5 RECROSS-EXAMINATION

6 BY MS. MINOR:

7 Q Mr. Rice, when you say the City has
8 approved, what department of the City are you
9 referring to?

10 A That would be Public Health.

11 Q Okay.

12 A Pam Hollis in particular.

13 Q Okay. Are you aware of any involvement
14 by the San Francisco Court, which has an ownership
15 interest in either reviewing the remediation plan
16 or asking for additional characterization?

17 A I have no direct knowledge of that, no.

18 Q Did you have a chance to review the
19 waste management testimony filed by the City?

20 A Yes.

21 Q Do you have an opinion about the concern
22 about migration of contaminants from onshore to
23 offshore?

24 A I believe that mechanism needs to be
25 identified and understood, ultimately.

1 MR. CARROLL: Again, I would ask, as I
2 did with Mr. Ramo, Ms. Minor, if you could please
3 clarify the concern regarding migration of
4 contaminants from onshore to offshore that has
5 perhaps occurred in the past or that would occur
6 during construction, or --

7 MS. MINOR: Well, let me -- And let me
8 ask all of those questions.

9 BY MS. MINOR:

10 Q Do you have an opinion as to whether in
11 the past there was a migration of contaminants
12 from onshore to offshore?

13 A I have not studied that. I think
14 intuitively that's certainly a possibility.

15 Q Do you have an opinion as to whether
16 today there continues to be migration of
17 contaminants from onshore to offshore?

18 A Again, I have no studied that, but that
19 could be.

20 Q As you've been a part of a planning for
21 construction for Unit Seven, are you aware of any
22 specific plans to limit or control doing
23 construction, the potential for contaminants to
24 move from onshore to offshore?

25 A I do know that as part of the intake

1 structure construction process, we've looked at
2 ways of doing that in order to retain or prohibit
3 migration from onshore sources, if they exist,
4 into the offshore by means of this cofferdam
5 construction.

6 Q Is it -- And please don't answer this
7 question if you're not prepared to do so, but do
8 you have a professional opinion as to whether the
9 cofferdam proposal is sufficient to limit the
10 migration of contaminants from onshore to
11 offshore?

12 A I have not evaluated that extensively.
13 I think conceptually yes, it certainly is
14 reasonable.

15 MS. MINOR: I don't have any further
16 questions. Thank you, Mr. Rice.

17 HEARING OFFICER VALKOSKY: Mr. Rostov?

18 MR. ROSTOV: No questions.

19 HEARING OFFICER VALKOSKY: Mr. Ramo?

20 MR. RAMO: No questions.

21 HEARING OFFICER VALKOSKY: I just have
22 one or two.

23 Mr. Rice, earlier you testified that the
24 use of hay as a berm material could be effective,
25 and you described it, I believe, if I recall

1 correctly, that it could retard or slow down the
2 flow of water from a pile?

3 THE WITNESS: Yes.

4 HEARING OFFICER VALKOSKY: Okay. So
5 there is an assumption there that you didn't say
6 that it would prevent the flow of water, so there
7 is a presumption that it will -- water will get by
8 the hay.

9 THE WITNESS: Some will, yes.

10 HEARING OFFICER VALKOSKY: Okay. And a
11 minute ago, in response to a question by
12 Mr. Carroll, you said that you would be monitoring
13 the adequacy to determine whether or not -- if hay
14 were used as the berming material, you would
15 monitor for its adequate containment.

16 THE WITNESS: Yes. Well, the whole
17 system, wherever --

18 HEARING OFFICER VALKOSKY: I'm a little
19 bit -- Help me out. What is it that you would --
20 What are the factors that you would have to see or
21 what circumstances would you have to see to be
22 concerned that the hay is not indeed adequately
23 containing any water, if you're assuming that some
24 water is going to get by, what is it you would
25 have -- what would set off the alarm?

1 THE WITNESS: Well, that to me is
2 somewhat qualitative. Obviously, the volume of
3 flow and evidence of siltation or silt transport
4 or sediment transport, visual observations of that
5 during rainfall events.

6 HEARING OFFICER VALKOSKY: So
7 sedimentation would be the only clue? Are there
8 materials that would be contained -- In a pile of
9 contaminated material, are there constituents that
10 could seep out with water that would not be
11 sediment, that would be water-like?

12 THE WITNESS: Well, remember we would be
13 covering the piles so they wouldn't be just raw
14 soil stockpiles, they would be covered so the
15 likelihood of sediment being generated by that is
16 very remote, sediment generated by a rainfall
17 event. But in the event there was a breach in the
18 liner perhaps, there could be some sedimentation.

19 HEARING OFFICER VALKOSKY: Okay, but I
20 guess my question is are there contaminants that
21 could seep out along with rainfall that are not
22 sediment?

23 THE WITNESS: No, most of the
24 contaminants in the soil excavated are heavy
25 metals, which are not necessarily tied up in the

1 sediments.

2 HEARING OFFICER VALKOSKY: Okay. So you
3 wouldn't be able to see these. You could do a
4 visual inspection, you wouldn't be able to see,
5 have clear indication that heavy metals are
6 seeping out past the bay with --

7 THE WITNESS: No, but as I say, you
8 would be seeing volumes of flow. Two things, we
9 look at flow of rainfall runoff and also sediment
10 load as well. And if there was high water flow
11 getting past the hay or whatever devices we would
12 have, that would be noted and corrected.

13 HEARING OFFICER VALKOSKY: How
14 frequently would you anticipate that this
15 person -- I don't know if it would be you, but
16 whoever the professional geologist is or the
17 monitor, how frequently is that person going to be
18 inspecting that?

19 THE WITNESS: That's hard to say. I
20 would think during rainfall events and during the
21 construction period we would have someone there
22 quite frequently, but I don't know, I can't state
23 an actual frequency.

24 HEARING OFFICER VALKOSKY: All right,
25 thank you.

1 COMMISSIONER PERNELL: One followup.

2 Mr. Rice, do you think it would be more
3 effective in terms of seepage if the berm was
4 lined, whether it be dirt or hay bales?

5 THE WITNESS: Lining would certainly
6 minimize infiltration through hay or soil, yes.

7 COMMISSIONER PERNELL: So, in your
8 opinion, that would be a more effective deterrent
9 than just a bale of hay?

10 THE WITNESS: Yes, absolutely.

11 COMMISSIONER PERNELL: Thank you.

12 HEARING OFFICER VALKOSKY: Are these the
13 types of measures and management practices which
14 will be routine in the SMIP?

15 THE WITNESS: Yes, they would be.

16 HEARING OFFICER VALKOSKY: Thank you.

17 Anything further for this witness?

18 With that, the committee thanks and
19 excuses you.

20 COMMISSIONER PERNELL: Thank you,
21 Mr. Rice.

22 THE WITNESS: Thank you.

23 (The witness was excused.)

24 HEARING OFFICER VALKOSKY: Thank you.

25 COMMISSIONER PERNELL: At this time the

1 committee will --

2 HEARING OFFICER VALKOSKY: Oh, do you
3 have any exhibits you would like to have admitted
4 at this time, Mr. Carroll?

5 MR. CARROLL: I do. At this time
6 applicant would ask that the following exhibits be
7 entered into evidence. Those portions of the
8 following exhibits identified by Mr. Rice either
9 in his prepared testimony or his testimony today
10 are Numbers One, which is the original AFC; 15,
11 the station A amendment to the AFC; 29, which are
12 responses to CEC data requests 140 to 161; 38,
13 responses to SAEJ data requests one through 155;
14 and 39, responses to SAEJ data requests 156 to
15 209.

16 The identified portions of each of those
17 exhibits we'd ask be moved into the record.

18 HEARING OFFICER VALKOSKY: Is there
19 objection?

20 MR. WESTERFIELD: No objection.

21 HEARING OFFICER VALKOSKY: With no
22 objection, they're admitted.

23 All right. Anything further,
24 Mr. Carroll?

25 MR. CARROLL: Nothing further, thank

1 you.

2 HEARING OFFICER VALKOSKY: I suggest you
3 may want to consider Exhibit 41.

4 MR. CARROLL: Yes, I'm sorry, Exhibit 41
5 as well.

6 HEARING OFFICER VALKOSKY: Objection to
7 Exhibit 41?

8 MR. WESTERFIELD: No objection.

9 MS. MINOR: No objection.

10 HEARING OFFICER VALKOSKY: No objection,
11 it's admitted.

12 COMMISSIONER PERNELL: All right, and at
13 this time the committee will take a short break
14 and reconvene at 12:00 o'clock.

15 (Brief recess.)

16 COMMISSIONER PERNELL: Mr. Valkosky.

17 HEARING OFFICER VALKOSKY: Thank you,
18 Commissioner. We will resume with staff's direct
19 testimony.

20 Mr. Westerfield, present and have your
21 witness sworn.

22 MR. WESTERFIELD: Thank you.
23 Whereupon,

24
25 Was called as a witness herein and, after first

1 being duly sworn, was examined and testified as
2 follows:

3 Whereupon,

4 MIKE RINGER

5 Was called as a witness herein and, after first
6 being duly sworn, was examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MR. WESTERFIELD:

10 Q Mike, would you please state your full
11 name for the record.

12 A Mike Ringer.

13 Q And what is your position with the
14 California Energy Commission?

15 A I'm a planner III, supervising the Air
16 Quality, Health, and Waste Management Unit.

17 Q And would you please briefly explain
18 your qualifications and your areas of expertise.

19 A I've been at the Energy Commission since
20 1975. I've been doing non-hazardous and hazardous
21 waste analyses since 1987. And I've done such
22 analyses in probably over 12 to 15 projects.

23 Q And what is your educational background?

24 A I have a bachelors degree in biology and
25 a masters degree in natural resources policy.

1 Q Thank you. And what has been your role
2 in the Potrero Seven project?

3 A I prepared the waste management
4 testimony.

5 Q And that is the testimony that is part
6 of the final staff assessment?

7 A Yes.

8 Q Is this still your testimony today?

9 A Yes.

10 Q All right. Would you please summarize
11 that testimony for the committee.

12 A Okay. Before I summarize, I'd like to
13 indicate that I have one change, and that would be
14 on page 5.13-21 under the Verification for
15 Condition of Certification Waste Six. The
16 verification currently states, "at least 45 days
17 prior to ground disturbance." I'd like to change
18 that to "60 days."

19 Q Okay.

20 A And that concludes the changes that I'd
21 like to make.

22 Q All right.

23 A I'll summarize my testimony. And in
24 doing so, I'm not going to take things in exact
25 order. What I'd like to do is go over the purpose

1 and scope. I'd like to cover the demolition
2 wastes, construction and operation wastes, and
3 then to some extent I'd like to talk about the
4 previous site characterization studies that have
5 been done and some of the information related to
6 the contamination.

7 Q Now, the waste management testimony of
8 staff is concerned with hazardous and non-
9 hazardous wastes generated during planned site
10 preparation, demolition, construction, and
11 operation. These wastes would be -- operational
12 wastes would be included for the life of the
13 facility, so I've looked at the entire lifetime of
14 the facility as far as the waste management
15 aspects go. I want to make sure that the waste
16 management aspects will be in compliance with all
17 applicable laws, ordinances, regulations, and
18 standards, and that disposal of project wastes
19 will not result in any significant adverse impacts
20 to existing waste disposal facilities or the
21 environment.

22 Starting with the demolition wastes that
23 will be generated with this project, there will be
24 the number of structures that are proposed to be
25 demolished, and this is part of an old industrial

1 facility, so these structures are associated with
2 that. Because of their age, there is a certain
3 amount of hazardous materials associated with
4 these structures such as asbestos and lead-based
5 paint.

6 Prior to demolition, if it occurs, the
7 buildings would undergo a hazardous materials
8 abatement by a licensed contractor. Confirmation
9 of the removal of the hazardous materials would be
10 made prior to the actual demolition, and there is
11 a proposed condition of certification that covers
12 that.

13 The applicant has estimated the amount
14 of hazardous wastes expected to be generated from
15 abatement, these types of wastes including
16 asbestos, lead, PCB ballasts, fluorescent lights,
17 certain other hazardous miscellaneous wastes.
18 These will be transported to hazardous materials
19 disposal sites that have been approved by the
20 state and/or Regional Water Quality Boards.

21 There would also be non-hazardous wastes
22 generated from demolition. Estimates are from 6-
23 to 8,000 cubic yards of concrete, and 8- to 10,000
24 cubic yards of brick, 4- to 500 tons of scrap
25 metal. The metals would be transported to a

1 recycling facility. The brick would either be
2 crushed on site for recycling as fill or
3 transported to a recycling plant. Concrete would
4 be transported to a recycling plant or crushed and
5 possibly used on site.

6 Now, construction wastes tend to be
7 typical of those used for any similar type of
8 construction activity. There would be non-
9 hazardous and hazardous wastes. Non-hazardous
10 wastes would include such things as paper, wood,
11 glass, plastics, etc. Applicant has estimated
12 about 150 tons of these wastes would be disposed
13 of. Recycling would take place to the extent
14 feasible.

15 As much of the waste concrete as
16 possible would be used to fill up protective pipe
17 bollards (phonetic), precast small slab or
18 retaining wall sections, or placed in non-
19 structural features, such as sidewalk steps, etc.
20 The remaining waste would be sent to approved
21 class three landfills.

22 Hazardous wastes would include waste oil
23 and grease, paints and solvents, welding materials
24 and the like. The amount of hazardous wastes
25 generated during construction will be fairly

1 minor. Most of the liquid hazardous waste would
2 be recycled.

3 During operation of the facility,
4 similarly, hazardous and non-hazardous wastes
5 would be generated as well. Solid wastes that are
6 non-hazardous during operation would include trash
7 office wastes, empty containers and such. Mirant
8 has estimated annual quantities of these wastes.
9 Hazardous wastes would include, again, spent oil
10 and filters, used cleaning solvents, spent air
11 pollution control catalysts. About 70 to 95
12 percent of these types of solid wastes are
13 expected to be recycled.

14 There is an existing hazardous waste
15 storage building located on the northeast corner
16 of the plant property which already contains
17 hazardous waste storage. This facility is on an
18 impermeable and bermed paved surface. It is
19 currently inspected weekly.

20 I have looked at the amount of wastes to
21 be generated, prepared the disposal facilities
22 that these wastes would go to, and determined that
23 there would not be a significant impact on the
24 remaining life or the daily operation of the
25 facilities due to these wastes.

1 Now, turning to the site itself, as we
2 all know now, this used to be an industrial
3 facility so that there is some contamination that
4 exists on a site, as part of historical site
5 investigations there have been a number of things
6 that have been done. There was a preliminary
7 endangerment assessment done in 1991, a phase one
8 environmental site assessment in 1997, a phase two
9 site assessment in 1998 with a continuation of
10 studies December 1999 to March 2000, and then
11 there has been some work to try to characterize
12 the extent of offshore contamination in the
13 sediment.

14 Now, as has been mentioned, PG&E does
15 retain responsibility. They have agreed with the
16 applicant Mirant in this case that they do have
17 responsibility for cleanup of existing
18 contamination. Towards that end, they have a
19 voluntary cleanup agreement with the Regional
20 Quality Control Board, and they've gone to the
21 site designation agency which is part of Cal EPA,
22 and they've requested that the Regional Water
23 Quality Board be designated as lead agency for the
24 site cleanup process.

25 Mirant has prepared a site mitigation

1 and implementation plan, and PG&E and Mirant are
2 committed to working together to ensure that the
3 cleanup of the site takes place along with
4 construction activities, if this plant is
5 approved. So PG&E has committed to coordinating
6 their remediation with Mirant, and their
7 construction activities.

8 Now, the work that I've alluded to, the
9 phase one and phase two environmental site
10 assessments and what-not, have given us quite a
11 bit of information about the site. There is some
12 additional information, though, that is being
13 taken care of. The Regional Board and PG&E are
14 currently in the process of investigating the
15 contamination, especially in the northeast corner
16 of the site, and to what extent the offshore
17 contamination may or may not be caused by onshore
18 contamination.

19 There are currently studies underway
20 that will be done probably towards the end of the
21 summer. The work plan for these studies has been
22 approved by the Regional Board. There should be a
23 report of results that may be out towards the end
24 of the year -- no, towards the end of the summer.
25 By the end of the year, these will form the basis

1 for a feasibility study of mitigation measures,
2 and at that time a remedial action plan will be
3 proposed and the Regional Board will take a look
4 at the proposal for the remedial action plan.

5 So we don't have perfect knowledge yet
6 of what's been going on, as far as migration, the
7 sources of migration, etc., so that's currently
8 being attended to.

9 What we do know is that the highest
10 portions of the contamination are pretty much
11 outside the construction area in the northeast.
12 Because of this, Mirant has decided to relocate
13 their intake structure and their outlet structures
14 south to try to avoid the portions with the
15 highest contamination.

16 The new design and construction of the
17 outlet will preclude the need to dredge as much as
18 the original design. The original design calls
19 for quite a bit of dredging, but the new design
20 only requires about 190 cubic yards or so of
21 dredging, but this is just for the outlet
22 structures. There will be more dredging needed
23 for the intake structure.

24 The pipes would be laid directly on the
25 sediment. There would be a fabric layer put down,

1 first on the sediment. The pipes would go on top
2 of that. There would be rock placed over the
3 pipes with a marine mattress and riprap over that.
4 The intake structure was proposed to be moved
5 about 250 feet south to avoid the highest part of
6 the sediment contamination.

7 Construction of this would take place
8 inside a silt curtain and a cofferdam. After the
9 intake structure is finished, there is a proposal
10 to line portions of the bayward side of that and
11 retaining walls. There would be lined concrete
12 walls and some portion of the facility in front
13 would be lined with concrete. This would help
14 prevent some migration.

15 Prior to construction, the site
16 mitigation and implementation plan, which is
17 required by the Maher ordinance, staff in
18 condition of certification waste six requires some
19 additional information to be included as part of
20 that SMIP. And this will be discussed in the
21 future in the soil and water resources section.
22 Soil and water staff is also proposing to require
23 certain additional information as part of the
24 SMIP.

25 Specifically under waste six, following

1 on comments from the Department of Toxic
2 Substances Control, we would like to have an
3 evaluation of impacts of de-watering,
4 identification of necessity, the necessity of
5 implementing control measures to minimize the
6 amount of expected extracted water, de-watering
7 water, and determine the disposal method. Also,
8 steps would be needed to ensure that grading or
9 other soil movement will not exacerbate existing
10 conditions or increase potential for worker or
11 groundwater impacts. The amount of excess fill
12 material and decision criteria for disposal would
13 need to be spelled out more specifically.

14 Soil and water staff are going to
15 require or propose to be required, as does waste
16 staff, more information about the water produced
17 from de-watering, the amounts of excess fill and
18 disposal criteria, work plan for management of
19 construction soil or groundwater, contaminated
20 soil and groundwater. And soil and water staff
21 will also require an erosion and sediment control
22 plan.

23 So with these measures in place, the
24 requirements, I believe that the construction of
25 Unit Seven would not unduly impact the environment

1 or create significant impacts, and that it would
2 be in conformance with all laws, ordinances,
3 regulations, and standards. So that concludes the
4 summary of my testimony.

5 Q Mr. Ringer, is it your belief that past
6 contamination at the proposed construction site,
7 in addition to current plans for future
8 characterization as reflected in the conditions of
9 certification, are adequate to properly or
10 thoroughly characterize the site?

11 A I believe that the combination of the
12 work that has been done, the continuing work that
13 is done under the auspices of the Regional Board,
14 the fact that the Department of Toxic Substances
15 Control has reviewed this and given us their
16 comments, that yes, this work would be done under
17 all the applicable LORS.

18 Q Okay. And is it your view that the
19 proposed project is in compliance with all
20 applicable LORS?

21 A Yes.

22 Q Are there any changes or modifications
23 to your prepared testimony?

24 A None other than the one I indicated at
25 the beginning.

1 Q All right.

2 MR. WESTERFIELD: We have no further
3 direct examination.

4 HEARING OFFICER VALKOSKY: Thank you,
5 Mr. Westerfield.

6 Mr. Ringer, if you would clarify some
7 points for me. On page 5.13-13 you talk about the
8 transmission line construction practices. Do you
9 believe your analysis is sufficient to adequately
10 analyze the waste management impacts, regardless
11 of which underground transmission alternative is
12 eventually chosen?

13 THE WITNESS: Yes. Part of the
14 conditions of certification include a waste
15 management plan that the applicant has to prepare
16 and present to staff for our approval, and any
17 waste that would be prepared in conjunction with
18 any transmission line would be included as part of
19 that plan.

20 HEARING OFFICER VALKOSKY: Mr. Rice on
21 behalf of applicant suggested a change from daily
22 to weekly disposal of construction waste, as --
23 construction debris, excuse me -- as currently
24 reflected in condition of certification waste ten.

25 Did you hear that?

1 THE WITNESS: Yes.

2 HEARING OFFICER VALKOSKY: Okay. Is
3 that proposed requirement for daily removal of
4 debris derivative on behalf of Commission staff or
5 does it come from BCDC?

6 THE WITNESS: That was a request by
7 BCDC, and I'm sorry I don't have a reference to
8 the specific request. I believe it may have been
9 in their comments on our PSA section, and I don't
10 know if that's an actual regulation of theirs or
11 if it was just a request. But that does come
12 directly from BCDC.

13 HEARING OFFICER VALKOSKY: Okay. In
14 your opinion, would daily request -- the request
15 for daily removal result in a greater degree of
16 potential environmental harm than weekly removal?

17 MR. WESTERFIELD: Mr. Valkosky, before
18 he answers that question, I would like to make a
19 comment that since this was a request of BCDC,
20 it's something that we would like to confer with
21 BCDC on, BCDC staff, to see if that can be
22 adjusted or just what the basis was for what
23 they're requesting, daily removals.

24 HEARING OFFICER VALKOSKY: Okay. That's
25 fair, Mr. Westerfield. When will you inform the

1 committee and all the parties of the results of
2 that?

3 MR. WESTERFIELD: I think we can get an
4 answer for you by early next week, even. But
5 there is some chance that Leslie Lacko of BCDC
6 will even be here this afternoon.

7 COMMISSIONER PERNELL: Is there any
8 chance we'll be here this afternoon?

9 (Laughter.)

10 MR. WESTERFIELD: Well, I don't know if
11 we'll be here at the same time.

12 HEARING OFFICER VALKOSKY: All right.
13 Why don't we set the end of the month, the 31st,
14 as the default date. And if we do not hear from
15 BCDC this afternoon, we will expect the staff to
16 clarify whether or not it can be changed from
17 daily to weekly, consistent with BCDC's request,
18 okay?

19 MR. WESTERFIELD: Thank you.

20 HEARING OFFICER VALKOSKY: Mr. Ringer,
21 on page 5.13-11, you talk about BCDC conditions,
22 among other things, the measures BCDC wanted to
23 ensure consistency with the dredging policy.

24 Are those measures incorporated in the
25 proposed conditions of certification?

1 THE WITNESS: Not in the conditions. I
2 believe that with the revised plan of construction
3 for the outlet facilities that, at least as far
4 as -- and the fact that any sediments from
5 construction of the intake or the near portion of
6 the outfall would be disposed of in an upland
7 area. With that in mind, that BCDC doesn't have
8 any problems with the proposal.

9 HEARING OFFICER VALKOSKY: Okay. When
10 you say revised plan, specifically which plan are
11 you referring to?

12 THE WITNESS: I'm talking about the fact
13 that the construction for the new outlet pipes
14 would be placed on the surface of the sediment,
15 rather than any massive amounts of dredging
16 required, and the fact that the sediment would be
17 disposed of in an upland facility.

18 HEARING OFFICER VALKOSKY: Okay. So to
19 your knowledge, that is sufficient to ensure
20 consistency with the BCDC report?

21 THE WITNESS: Yes.

22 HEARING OFFICER VALKOSKY: Do you have
23 an opinion on the acceptability and/or necessity
24 of the various elements of condition waste nine as
25 proposed by the City and County of San Francisco?

1 THE WITNESS: In their testimony?

2 HEARING OFFICER VALKOSKY: In their
3 testimony.

4 THE WITNESS: Yes. I believe that --
5 Pardon me if I'm sort of going on to legal stuff.
6 My attorney will have to stop me if I get too far.

7 HEARING OFFICER VALKOSKY: I'm
8 interested in your technical opinion, not your
9 legal opinion.

10 THE WITNESS: I think this is going
11 beyond the scope of staff's interest in waste
12 management as to, you know, which parties are held
13 harmless or responsible. I believe that waste
14 nine as staff is proposed is adequate to ensure
15 that the remediation will occur.

16 I think it is up in the air right now
17 exactly what the source of the offshore
18 contamination is. I mean, there are multiple
19 sources for the offshore contamination. Whether
20 or not the bulk of it is migrating or is
21 historically -- whether historical activities off
22 of piers might have been partially responsible,
23 there are non-point sources as well that
24 contribute to contamination in the bay.

25 So for myself, I wouldn't put in their

1 proposed waste nine language to staff's
2 recommendations.

3 HEARING OFFICER VALKOSKY: Okay. Let me
4 phrase it slightly differently. Since you would
5 assess consistency with laws, ordinances,
6 regulations, and standards, is the incorporation
7 of any or all of those provisions necessary in
8 your opinion to ensure consistency with the LORS?

9 THE WITNESS: No.

10 HEARING OFFICER VALKOSKY: Expand a
11 little bit for me, if you could, upon PG&E's
12 agreement with the Regional Board that you
13 mentioned in your summary. Am I correct in
14 understanding that that agreement was presently
15 limited to the onshore portion of the site?

16 THE WITNESS: I have not seen the
17 agreement. I have discussed a little bit with the
18 Regional Board staff, who is overseeing this, and
19 it's my understanding that they're continuing in
20 investigations of the northeast area. And I
21 believe that it's not just limited to the land
22 side.

23 HEARING OFFICER VALKOSKY: Okay, but you
24 don't know for sure whether or not it covers the
25 offshore?

1 THE WITNESS: I have not seen the
2 agreement myself.

3 HEARING OFFICER VALKOSKY: Okay. You
4 mentioned that you received comments from DTSE.
5 Are measures sufficient to fulfill any
6 requirements contained in those comments
7 incorporated in your proposed conditions of
8 certification?

9 THE WITNESS: They are, and the revised
10 site mitigation and implementation plan that we
11 would require, as part of waste six, they say that
12 it's required that they -- the plan be prepared in
13 accordance with DTSE comments and the requirements
14 of the Maher ordinance. And also, that's where
15 they include soil handling and management measures
16 for the transmission line as well.

17 HEARING OFFICER VALKOSKY: And last,
18 again, I want to ask you a question similar to
19 that that I asked Mr. Rice earlier, and it
20 concerns the last portion, the last sentence of
21 your proposed condition, waste five, and of all
22 the contact with representatives of the various
23 agencies for guidance and possible oversight.

24 And again, as a practical matter, I
25 wondered if you could explain further to me what

1 exactly that means, or how exactly that works.

2 THE WITNESS: There would be a
3 registered engineer or geologist who had been
4 approved by staff to be available, and if during
5 construction anything turns up that is
6 questionable, whether it be a staining of the
7 soil, contamination, use of handheld meters, etc.,
8 the person who has been approved by staff would
9 have experience in prior remediation activities
10 and what-not, and they would be responsible to go
11 down, take a look at the site, see if further
12 action would be necessary. And, as far as the
13 coordination goes, well, they would then prepare a
14 report.

15 If, in their judgment, and also in
16 staff's, staff would get that report to look at,
17 any question at all about further work that would
18 need to be done, they would actually contact the
19 appropriate people at DTSE, DPH, or the Regional
20 Board, submit a copy of the report to them. And
21 at that time the agency personnel would look and
22 see whether or not, in their opinion, there is
23 enough information to make a conclusion at that
24 time of whether further information might be
25 required, whether it be sampling or what-not, and

1 it would go from there.

2 HEARING OFFICER VALKOSKY: Okay, and it
3 would go from there means exactly what? I mean,
4 are we having discussions among technical staff
5 from any involved agencies?

6 THE WITNESS: Yes. This would be at a
7 technical level. One of the things that might
8 happen is that at that particular portion of the
9 site it might be required that work could be
10 stopped until further information is done. There
11 may be sampling and analysis required. And if
12 contamination were found that was a little bit
13 more extensive than previously anticipated, then
14 they could actually require, along with further
15 studies, proposed remediation measures, a remedial
16 action plan, as much as it took at the technical
17 level.

18 HEARING OFFICER VALKOSKY: Okay. When
19 you say they could -- Did you say proposed, or
20 could they require the additional management
21 measures?

22 THE WITNESS: They could require.

23 HEARING OFFICER VALKOSKY: They could
24 require it, okay. Thank you.

25 COMMISSIONER PERNELL: You indicated

1 that you reviewed reports and environmental work
2 that's been done previously on the site.

3 THE WITNESS: Yes.

4 COMMISSIONER PERNELL: And I thought I
5 heard you say that the majority of the
6 contaminants is in the northeastern part of the
7 site?

8 THE WITNESS: The heaviest contamination
9 with the PAHs and what-not was found to be in that
10 area. I mean, there is contamination to some
11 extent over the entire site, you know, including
12 total petroleum, hydrocarbons, metals, what-not.
13 The heaviest contamination was in the northeast
14 corner, which corresponds to the location of a
15 manufactured gas plant that was up in that area,
16 and that was the reason why they chose to move
17 some of the site structures such as the intake and
18 the outlet further south, to avoid the area of the
19 highest contamination, especially offshore.

20 COMMISSIONER PERNELL: Okay. Just to
21 help me from a visual standpoint, I have what is
22 Exhibit 46. We've been kind of using this as a
23 map. Do you guys have --

24 MR. WESTERFIELD: We have just one.

25 MR. RAMO: We'll share.

1 THE WITNESS: Okay, I can look this way.

2 COMMISSIONER PERNELL: Do you think you
3 could share a little bit?

4 Is that the upper right-hand portion of
5 the site?

6 THE WITNESS: Correct.

7 COMMISSIONER PERNELL: Okay. And
8 that -- So this is where the gas plant and all of
9 that exists, these buildings?

10 THE WITNESS: It's my understanding that
11 that was up towards the northeast area as well.
12 There was also a sugar refinery that was off in
13 the eastern section. I'm not sure exactly where
14 it was located in relation to the other, but it
15 seems like a lot of historical activity has been
16 to the east and northeast portion.

17 COMMISSIONER PERNELL: Okay. And do you
18 have a copy of or have you seen the site mediation
19 plan?

20 THE WITNESS: There is a remedial action
21 plan, which is not yet --

22 COMMISSIONER PERNELL: Remedial action
23 plan.

24 THE WITNESS: Okay. There are a couple
25 of different things. There is a site mitigation

1 and implementation plan, which was part of the
2 AFC. It was Appendix D, I believe, they submitted
3 some additional information after that. And that
4 is the plan that the Maher ordinance requires to
5 be prepared, and that's also the plan that we were
6 requiring to be updated as part of our conditions.
7 The remedial action plan is a sitewide plan that
8 PG&E will be preparing under the original board
9 direction.

10 COMMISSIONER PERNELL: And it's PG&E's
11 responsibility to do that?

12 THE WITNESS: Yes.

13 COMMISSIONER PERNELL: Okay. Are there
14 any others?

15 THE WITNESS: I believe these are the
16 two main remedial plans.

17 COMMISSIONER PERNELL: Okay. That's all
18 I have. Thank you.

19 HEARING OFFICER VALKOSKY: Mr. Carroll?

20 MR. CARROLL: Thank you.

21 CROSS-EXAMINATION

22 BY MR. CARROLL:

23 Q Mr. Ringer, I just had a couple of
24 questions on conditions of certification. On
25 waste nine, we had some discussion earlier and I

1 think you were in the room when I indicated that
2 we had some question about the scope of this
3 condition.

4 Is your intent that the phrase "proposed
5 project site" that's in the second line of that
6 condition refer to the area affected by the
7 construction of Unit Seven?

8 A Yes. It's my intent that this refers to
9 Unit Seven and related facilities, much the same
10 way that project site would be used in staff's
11 analysis when we refer to project site as part of
12 the description of the applicant's proposal.

13 Q Okay, thank you for that clarification.

14 And then my other question was, I
15 thought I heard you mention in your testimony this
16 morning about possibly some additional conditions
17 of certification related to de-watering. Are you
18 proposing additional conditions today or are there
19 going to be some additional proposed conditions
20 when we get to soil and water, or did I just
21 mishear that?

22 A There will be some additional conditions
23 in soil and water.

24 Q That's fine.

25 A Let me clarify. Waste six requires a

1 final SMIP in accordance with DTSE comments, and I
2 probably should have specified those here, but the
3 last DTSE comment letter did specify specifically
4 that they wanted to see an evaluation of impacts
5 of de-watering, including identification of the
6 necessity of implementing control measures to
7 minimize the amount of extracted waters and
8 determine the specific disposal method. And then
9 they had a couple of other things as well.

10 But I'm referring, when I say here in
11 waste six, "In accordance with DTSE comments,"
12 that's their official comment letter that has been
13 docketed.

14 Q Okay. But today, you're not proposing
15 any additional changes to the waste conditions of
16 certification?

17 A No. The additional comments that I made
18 were based on what was in the soil and water FSA.

19 Q Okay, thanks. And I don't necessarily
20 have any concerns about what you were saying, I
21 just wanted to make sure we would see the exact
22 language to the extent there were going to be
23 changes. So it sounds like we will.

24 MR. CARROLL: That's it. Thank you.

25 HEARING OFFICER VALKOSKY: Ms. Minor?

1 MS. MINOR: Okay.

2 CROSS-EXAMINATION

3 BY MS. MINOR:

4 Q Mr. Ringer, would you clarify for us
5 whether the process at the Water Board is
6 currently undertaking with PG&E to develop the
7 remediation plant for the site. Is that a public
8 process?

9 A I believe it is.

10 Q And so the document you have access to,
11 is that a public document that's either on a web
12 site or is available so that we can get further
13 information about both the work that's ongoing as
14 well as the time frame that's been set?

15 A My remarks this morning were based on
16 discussion I had with Vic Pal of the Regional
17 Board, and in part with one of the consultants for
18 PG&E for Geomatrix.

19 COMMISSIONER PERNELL: Would you
20 characterize that as hearsay?

21 THE WITNESS: You might. I talked to
22 him directly.

23 (Laughter.)

24 MS. MINOR: I'm not accepting it for the
25 truth of the matter.

1 BY MS. MINOR:

2 Q So you do believe that it's a public
3 process. Do you have a docket number?

4 A No, I asked if it were a public process
5 and he indicated it was. But I do not have a
6 docket number.

7 Q And so that's Vic Pal, you said?

8 A Vic Pal, P-a-l.

9 Q Okay. Are you aware of ongoing
10 discussions with anyone in the City and County of
11 San Francisco about the remediation plan?

12 A I know that --

13 MR. WESTERFIELD: Just a second. We've
14 got two apparent remediation plans, so which one
15 are you referring to, Jackie?

16 MS. MINOR: I'm referring specifically
17 to ongoing discussions with the Water Board at
18 this point.

19 MR. WESTERFIELD: Okay, the remedial
20 action plan or possible remedial action plan,
21 correct?

22 MS. MINOR: If that's what it's called.

23 THE WITNESS: I am not.

24 BY MS. MINOR:

25 Q Okay. You're not aware of any

1 discussions with anyone in the City and County of
2 San Francisco related to their remedial action
3 plan; is that correct?

4 A Correct.

5 Q Okay.

6 A I don't know if there are discussions.
7 I'm not aware of anything one way or the other.

8 Q Okay. Do you have a copy of the
9 agreement between PG&E and Mirant related to the
10 responsibility for cleanup of the site,
11 remediation of the site?

12 A No.

13 Q If you would go to page 5.13-7 of your
14 testimony, the second paragraph in the July 2000
15 section, and this is a followup on the question
16 that I believe Commissioner Pernell asked, you
17 indicate the two primary areas that have been
18 impacted by contamination.

19 A Yes.

20 Q Do you have an opinion as to why these
21 two areas appear to have the heaviest
22 contamination?

23 A My opinion is that it is one or both of
24 the -- a couple of historical activities that have
25 occurred, and that could be either the

1 manufactured gas plant, contaminants that were
2 generated during its operation, and/or historical
3 piers that had been in the area where certain
4 offloading had been done. Certain of the higher
5 readings were done, seemed to occur along where
6 some of the piers were. So whether or not the
7 contamination in part came from migration or all
8 or whether some of it was due to some direct
9 disposal or dumping from ships, for instance, that
10 were docked along the piers, it could be a
11 combination of those.

12 I can't say for sure and I don't think
13 it's been determined for sure by the agencies yet
14 what the source of the contamination has been
15 specifically.

16 Q And you believe one potential source of
17 the contamination offshore is migration from
18 onshore?

19 A Potentially, yes.

20 Q Do you believe that the issue of
21 migration, either from parcel to parcel or from
22 onshore to offshore, needs to be resolved in order
23 to be able to complete the site characterization?

24 A By site, do you mean the Unit Seven site
25 or the complete Potrero site?

1 Q Let's start with the Unit Seven site.

2 A I believe that the onshore portion of
3 the Unit Seven site, where the bulk of the actual
4 facilities are going to go, has been characterized
5 to the satisfaction of DTSE. As far as the rest
6 of it goes, the offshore portion I believe that
7 that's the basis of some of the continuing
8 investigations that are currently being done now
9 by PG&E under direction of the Regional Board.

10 Q Does the CEC staff have an ongoing role
11 in reviewing the work that PG&E is doing to assess
12 the level of contamination and the cause of the
13 contamination?

14 A To the extent that PG&E is doing work
15 that affects the Unit Seven site. The rest of it,
16 PG&E has responsibility for remediation under law,
17 and they are continuing their relationship with
18 the Regional Board regardless of whether or not
19 this project proceeds.

20 To the extent that we will get
21 information in the future, either from the
22 conditions of certification or reports that may be
23 generated as kind of secondarily to those
24 conditions, such as if existing contamination is
25 found, we will have that sort of ongoing interest

1 as far as compliance.

2 Q Which condition of certification that
3 the staff proposes do you believe requires Mirant
4 to submit to the staff updates, information about
5 PG&E's site characterization?

6 A Well, as part of their site mitigation
7 implementation planned update to us, to the extent
8 that future information is found, their waste
9 management plans that they have to submit to us.
10 As part of condition waste three, they have to
11 tell us how are they going to manage the wastes,
12 and that includes wastes from preparation of the
13 site.

14 Q Okay. I'd like it to be clearer in my
15 mind than it currently is that this information
16 that apparently PG&E is submitting to the Water
17 Board somehow also gets to the staff, to the CEC
18 staff. Is there a condition of certification that
19 requires information that is in PG&E's possession
20 and control to --

21 A I'm not -- I'm sorry --

22 Q Is there a condition of certification
23 that would require that information relating to
24 site characterization, and let me say as it
25 relates to the construction of Unit Seven, be

1 submitted to the CEC staff?

2 A Well, I think the extent to which PG&E
3 is continuing its investigations is not related to
4 Unit Seven as much as it is the northeast, the
5 question of whether or not the migration is
6 happening and whether the sediment contamination
7 is due mostly to migration or whether it was
8 existing.

9 To the extent that additional things are
10 being done on site, to additionally characterize
11 it, I believe that Mirant would be responsible for
12 that. To that extent, certainly we would be kept
13 informed.

14 Q And you're kept informed based on which
15 of the conditions of certification?

16 A Again, their waste three, where they
17 have to give us management methods which would in
18 turn be based on the amount of contamination, the
19 extent of contamination, the final site design,
20 and some other things which have not necessarily
21 been determined yet, such as hypothetically
22 whether or not any sort of on-land cooling
23 structure may need to be placed.

24 Q Can I ask you to look at the
25 modifications that the City of San Francisco has

1 proposed to waste nine. There are four --

2 A Hold on a second while I find it.

3 Q It's attached as Exhibit C to Carol
4 Bach's testimony.

5 A Okay.

6 Q Have you found it? Have you located it,
7 Mr. Ringer?

8 A Yes, sorry.

9 Q Okay. There are four aspects to these
10 modifications. Would you look at the first one
11 which begins, "An adequate and complete site
12 investigation," and tell us what aspect of that
13 you object to.

14 A "Site" is not defined, number one. And
15 it's not explained as far as "the full extent,
16 distribution, and migration of the onshore and
17 offshore contaminants," if you're referring to
18 like the northeast section, I don't believe that
19 there is currently now proposed to be any Unit
20 Seven structures in that area.

21 So to the extent that we do or do not
22 know at this time whether migration is occurring,
23 I don't believe that it is necessary for this
24 project. And that is the scope of ongoing
25 activities between PG&E and the Regional Board.

1 Q Any other comments about the first
2 aspect of that proposed modification?

3 MR. WESTERFIELD: And what do you mean,
4 Jackie, by the first part?

5 MS. MINOR: Well, as I said, there are
6 four proposed changes, and I've asked Mr. Ringer
7 to look at the first one. I'm going to look, I'm
8 going to ask him to tell us his concerns about
9 each of them.

10 MR. WESTERFIELD: Just defining what you
11 mean by "first," you mean that paragraph?

12 MS. MINOR: Yes.

13 THE WITNESS: Then I guess by "adequate
14 and complete," I would have a question of what
15 that means. We never have total 100 percent site
16 characterization, in any case. I mean, a certain
17 number of borings and samples are taken. You can
18 always run into something that you don't
19 anticipate our goal in trying to characterize a
20 site as to get an idea of what's there and the
21 extent, and I believe that for the Unit Seven site
22 that there has been enough investigations to where
23 we understand what's out there to a fair degree.

24 BY MS. MINOR:

25 Q Okay, and before you leave this, let me

1 just clarify, is it your testimony that you do not
2 believe the source of the offshore contamination
3 needs to be determined before Unit Seven can be
4 constructed?

5 A There was a question of whether or
6 not -- There is a ridge that prevents some of the
7 onshore contamination from moving offshore, so
8 that's being investigated. Again, to the extent
9 that the intake and outlet facilities have been
10 moved south, and that there are certain measures
11 to be taken place during construction with the
12 capping after construction near the intake, with
13 100 percent certainty we don't -- you know,
14 knowledge of what's happening up in the northeast
15 area I don't think is required.

16 Q Even if you're the property owner, such
17 as the San Francisco Port?

18 A Well, if I was the Port, I'd love to
19 know.

20 Q Okay. Any other comments about the
21 paragraph that begins, "An adequate and complete
22 site investigation"?

23 A No.

24 Q Okay. And the second paragraph that
25 also begins, "An adequate and complete plan," what

1 are your comments or concerns about that proposal?

2 A Again, when you talk about the migration
3 and discharge of PAHs to San Francisco Bay, do you
4 mean the entire Potrero site or just the portions
5 near the proposed structures? "An adequate and
6 complete plan for remediation of the site," if you
7 mean the Unit Seven site. I don't know if -- I
8 think an adequate plan has been -- will be
9 proposed prior to the start of construction when
10 the applicant submits its site mitigation and
11 implementation plan to us prior to site
12 mobilization.

13 And as far as the remedial action plan,
14 again, that's not going to be finalized until
15 probably late this year or sometime early next
16 year, after the activities that the Regional Board
17 have required to have been completed, a
18 feasibility study has been completed and then the
19 remedial action plan proposed and reviewed and
20 approved.

21 The Board, in my discussions with Vic
22 Pal, his concern was that construction of Unit
23 Seven not stand in the way of any future
24 remediation activities and that all required
25 remediation be done either prior to or during

1 construction of Unit Seven. It's the Board's
2 philosophy that construction and remediation are
3 complementary to one another and can take place in
4 large part concurrently, such as the removal of
5 soil from the site, which would have to be done in
6 either case. That's when the remediation measure
7 is just to remove the soil. So that's something
8 that would be done to serve both purposes.

9 Q So are you looking at point three?

10 A Point three?

11 Q Paragraph three.

12 A I was responding to your question on
13 paragraph two. I haven't made it to paragraph
14 three yet.

15 Q Okay. I wasn't sure where you were,
16 thank you.

17 A Yes.

18 Q So it's your testimony that the Regional
19 Board sees the current cleanup in construction as
20 complementary?

21 A Yes, not necessarily incompatible.

22 Q Are you ready to move on to the third
23 paragraph?

24 A Yes.

25 Q And if you would, review that paragraph

1 and tell us any comments or concerns you have
2 about the proposal that begins, "Remediation as
3 appropriate."

4 A I agree with that, with the typo, adding
5 a "t" onto the "no" on "do not," but I agree with
6 that paragraph.

7 Q Okay. And then the fourth paragraph?

8 A My opinion is that this is not something
9 that really has anything to do with Unit Seven
10 construction, per se.

11 Q And if it were limited to the Unit Seven
12 construction project?

13 A I believe, given the possibility that
14 historical activities not related to the
15 manufactured gas plant or PG&E's activities, to
16 the extent that there is some possibility,
17 whatever chance it may be, however slight, that if
18 the Port were responsible that that's the way it
19 is. The Commission doesn't have any business
20 assigning responsibility at this point or
21 requiring Mirant to hold the Port harmless.

22 Q Mr. Ringer, a couple of times you've
23 alluded to other possible sources for the offshore
24 contamination. What is the basis for your
25 belief -- I think you've mentioned that it may be

1 minimal. What is the basis for your belief that
2 there are other sources for this offshore
3 contamination?

4 A Well, in general, as we know, the bay
5 has got contamination issues all over. Some of
6 those sources of contamination are runoff from
7 non-point sources, even fallout from the
8 atmosphere. One of the -- There is PCB
9 contamination, there is dioxin. Some of that is
10 from the atmosphere.

11 To the extent that there were ships
12 loading or unloading from piers, that could be a
13 possibility. It may not all come from just the
14 site migrating offshore there.

15 Q Okay. Are you familiar with Exhibit B
16 that's appended to Dr. Fetzer's testimony, a City
17 witness?

18 A Yes.

19 Q Do you have any basis for -- Do you have
20 any data to suggest that the contamination that is
21 shown in the pink, the orange, the yellow sections
22 is being caused by something other than
23 contamination related to the operation of the
24 Potrero site?

25 A Well, based on this, this is -- I mean,

1 one couldn't conclude what the source was based
2 strictly on this, because this is just the results
3 of sediment characterizations.

4 Q But I guess my question was do you have
5 any basis to believe that there is a source of
6 this contamination, other than the operation of
7 the Potrero power plant?

8 A I believe that the -- Let's see, hold on
9 just a second. The basis on which I made those
10 statements was a letter from PG&E to Vic Pal at
11 the Regional Board commenting on the offshore
12 sediment sampling report that URS had done, and--

13 Q Is that letter in the record?

14 A I don't know if this has been docketed
15 or not. This is dated December 21, 2000.

16 MR. PRYOR: This is Mark Pryor. The
17 letter that Mr. Ringer refers to was copied to me
18 as well as Janet Naito of California DTSE and
19 Ms. Gaut of BCDC. So I must assume that it's been
20 docketed, although I cannot verify that at this
21 point.

22 MS. MINOR: Okay.

23 MR. WESTERFIELD: Why do you say that?

24 MR. PRYOR: Because it's rare for me to
25 miss something that comes to me that I do not

1 docket and distribute.

2 HEARING OFFICER VALKOSKY: Can we go off
3 the record for a second.

4 (Brief recess.)

5 BY MS. MINOR:

6 Q Mr. Ringer, I haven't seen the document
7 that you're referring to, the PG&E letter dated
8 December 2000, and you did not indicate that it
9 had been copied to anyone in the City and County
10 of San Francisco. I'd like to reserve the right
11 to ask questions about that document once it has
12 been made available to all the parties. We noted
13 that it was not listed as one of your references
14 in your testimony, Mr. Ringer.

15 Does that document cite to any primary
16 sources --

17 MR. WESTERFIELD: Just a moment, Jackie,
18 we're still checking.

19 MS. MINOR: Okay.

20 MR. PRYOR: It was docketed 1/9/01.

21 HEARING OFFICER VALKOSKY: Okay.

22 MR. PRYOR: Docket number --

23 HEARING OFFICER VALKOSKY: Please.

24 MR. PRYOR: 17869.

25 MR. WESTERFIELD: Mike, you want to show

1 this letter to Jackie now?

2 THE WITNESS: Sure.

3 MR. WESTERFIELD: Do you want to take a
4 look at it? Unfortunately --

5 MS. MINOR: You only have one copy?

6 MR. WESTERFIELD: Well, yes.

7 MS. MINOR: Okay.

8 MR. WESTERFIELD: But you were going to
9 ask us about it.

10 THE WITNESS: If I could respond to one
11 of your last statements, that this was not a
12 reference in my testimony, I don't believe I
13 addressed the source of the contamination in my
14 testimony. So I just used my knowledge of this
15 reference to respond to your question here about
16 potential sources of contamination.

17 MS. MINOR: I would like to ask that
18 this be included, the letter dated December 21,
19 2000 from Yvonne Meeks of PG&E to Vic Pal of the
20 Water Board, be included as an exhibit, and if we
21 could ask that copies be made available to all the
22 parties. I understand it's been docketed, but I
23 am quite sure we don't have it in our file.

24 MR. WESTERFIELD: We'd be happy to get
25 you a copy.

1 MS. MINOR: Okay, great. Thank you.

2 HEARING OFFICER VALKOSKY: Okay. How
3 about -- Do you intend to sponsor that as an
4 exhibit?

5 MR. WESTERFIELD: We had no plans to do
6 that, no.

7 HEARING OFFICER VALKOSKY: Will you
8 sponsor that as an exhibit? I would like to
9 clarify, Ms. Minor, that it is part of the record
10 in that it is docketed, it is part of the broader
11 administrative record.

12 MS. MINOR: Mm-hmm.

13 HEARING OFFICER VALKOSKY: Therefore, it
14 can be used to explain other related evidence in
15 the record.

16 MS. MINOR: Okay.

17 THE WITNESS: And if I could clarify my
18 answer by briefly summarizing one or two
19 paragraphs, would that be --

20 HEARING OFFICER VALKOSKY: Of what?

21 MS. MINOR: Of the letter?

22 HEARING OFFICER VALKOSKY: Well, let's
23 dispose of this issue first.

24 MS. MINOR: Yeah, I wanted to make
25 certain that it was in the record so that when we

1 revisit some of these issues in the soils and
2 water topic area, that we have it available for
3 further cross-examination.

4 HEARING OFFICER VALKOSKY: It is in the
5 record. The distinction under our rules, between
6 something which is in the broader administrative
7 record and something which is in the evidentiary
8 record, is that the committee and ultimately the
9 Commission cannot make a finding based on a
10 particular piece of evidence or information unless
11 it is in the hearing record. Those are the
12 exhibits we're talking about.

13 The committee can rely on something in
14 the broader administrative record to explain or
15 supplement materials that have been entered into
16 the evidentiary record. But if there is only that
17 one item in the administrative record, unsupported
18 by evidentiary materials, the committee could not
19 make a finding based on that.

20 So with that explanation --

21 MS. MINOR: Thank you for that
22 explanation.

23 HEARING OFFICER VALKOSKY: Okay. Now,
24 would you like Mr. Ringer to summarize I believe
25 he was going to do? You were kind of tense over

1 that?

2 MR. WESTERFIELD: I'm sorry?

3 HEARING OFFICER VALKOSKY: I understood
4 that Mr. Ringer was about to summarize the
5 contents of this.

6 MR. WESTERFIELD: Yes. Would you like
7 the letter back?

8 MS. MINOR: Certainly.

9 THE WITNESS: URS, on behalf of the
10 applicant, had prepared a sediment report and
11 speculated -- well, and stated their opinion as to
12 the source of the contamination. PG&E's
13 consultant, Geomatrix, reviewed that and in part
14 raised some additional questions as to what the
15 potential sources could be, for various reasons.

16 Generally, they indicate that the source
17 of the PAH within the nearest shore sediments
18 could have been historical deposition of
19 contaminated material and debris associated with
20 150 years of industrial activity in the area. All
21 of the samples that have the highest PAH levels
22 are located under or in the immediate vicinity of
23 the former industrial wharfs on a photograph that
24 was included as an attachment to this letter.
25 Historical maps show the C&H sugar refinery wharf

1 included cohandling facilities, and a large ship
2 with a black plume emanating from it is apparent
3 in the vicinity of many of the URS sediment sample
4 locations.

5 So my only point in relying on this and
6 in response to the question was that I don't think
7 that it's 100 percent certain where the
8 contamination came from, and that that's why there
9 are certain other ongoing activities.

10 MR. WESTERFIELD: She might want that
11 letter back.

12 BY MS. MINOR:

13 Q Has there been any followup with PG&E
14 about that letter?

15 A I have not.

16 Q Okay. So you have not sought from PG&E
17 any primary sources to support the claims or the
18 allegations that are set forth in that letter?

19 A Well, they do list some -- the reasons
20 why they said that there may be other
21 explanations, and that has to do with the actual
22 sampling and the interpretation of the report
23 itself.

24 Q Okay, but that was PG&E's response to
25 the initial URS report that was prepared on behalf

1 of Mirant.

2 A Correct.

3 Q Okay. Let me just go back to
4 modifications to waste nine and just verify that
5 we've completed looking at that. I think we have.

6 Mr. Ringer, I think I was in the process
7 of asking you if you would go back and look at the
8 fourth item in the proposed modifications to waste
9 nine, proposed by the City, and again it's
10 Exhibit C to Carol Bach's testimony. I think we
11 were in the process of discussing whether, if the
12 City's proposal were limited to liability,
13 responsibility, claims and costs associated with
14 the construction of Unit Seven.

15 My question was would that be acceptable
16 to you?

17 A I would say if it's associated with
18 onshore and offshore contamination that was
19 created or exacerbated by construction of Unit
20 Seven. In other words, for anything that's
21 existing, as long as PG&E was the responsible
22 party and it's known that they were the
23 responsible party, they have to take care of it.

24 If, in fact, Mirant does something, for
25 instance, they spill something themselves or they

1 do something incorrectly without somebody's
2 knowledge as far as making things much worse than
3 currently exist, then I think it's fair to say
4 that they should be responsible for that.

5 Q And who do you believe -- Which party do
6 you believe is responsible for contaminants that
7 migrate during the construction of Unit Seven?
8 They're existing contaminants that migrate.

9 MR. WESTERFIELD: Jackie, I have to
10 object to that question --

11 MS. MINOR: Okay.

12 MR. WESTERFIELD: -- to the extent it
13 asks for a legal conclusion or an opinion of law.

14 MS. MINOR: Mm-hmm. One more question,
15 and then I'm done.

16 BY MS. MINOR:

17 Q Mr. Ringer, waste nine as currently
18 proposed by the staff --

19 A Yes. Did you say ads currently
20 proposed?

21 Q That's correct, and in your testimony.

22 A Mm-hmm.

23 Q -- does waste nine cover, as it is
24 currently drafted, intend to cover offshore
25 contamination?

1 A The phrase "proposed project site," in
2 the context of Energy Commission language, means
3 and all or pertinent facilities, and that's what I
4 intend it to mean. So to the extent that there is
5 the intake structure and all areas that are
6 affected by the outfall pipes.

7 Q Is there a definition of "project site"
8 that, given the offshore sediments, it's clear
9 that offshore sediments is included in the
10 definition of project site?

11 A That should be in the project
12 description section, but I can't -- I mean, I
13 don't have that in front of me, and I couldn't
14 point to a specific sentence, but generally that's
15 the case.

16 Q Would you be willing to modify waste
17 nine to make it clearer?

18 A To the extent that -- to further respond
19 to this, we always include transmission lines,
20 things like that, gas pipelines, water pipelines,
21 that's all understood and that's pretty clear that
22 that's all included. I would assume, I would say
23 that that's the case here. I don't have a
24 specific objection to spelling out in detail what
25 we mean.

1 Q Okay.

2 MR. WESTERFIELD: I have to say, I'm not
3 sure that's necessary because we have descriptions
4 of that already in the project description,
5 presumably, and also Mr. Ringer has testified
6 exactly to what he means as project site.

7 MS. MINOR: Well, I don't have the
8 definition of project -- Are we getting the
9 definition of "project site"? Does Mr. Pryor have
10 it?

11 HEARING OFFICER VALKOSKY: Are you
12 referring to a statutory definition or another
13 definition?

14 MR. WESTERFIELD: I'm trying to quickly
15 look at the project description.

16 Well, I guess there are several
17 references. First, the Warren-Alquist Act refers
18 to "project" as a matter of law, yes. And then
19 we've got some definition in the project
20 description which includes the new water intake
21 structure and discharge systems that will be
22 constructed at the shoreline.

23 And I'm sure that's very thoroughly
24 described in the AFC.

25 HEARING OFFICER VALKOSKY: If I may,

1 Mr. Westerfield --

2 MR. WESTERFIELD: Yes.

3 HEARING OFFICER VALKOSKY: --

4 Mr. Carroll, do you agree that the project, the
5 Unit Seven project includes a pertinent facility
6 such as any intake or outfall facilities that are
7 built in direct relationship to the -- In other
8 words, what is --

9 MR. CARROLL: Yes.

10 HEARING OFFICER VALKOSKY: Yes, thank
11 you.

12 THE WITNESS: If I could add one
13 clarification as well, in the waste management
14 testimony, 5.13-2 and -3, where it says Project
15 and Site Description, on the portion of that
16 section that's on page 5.13-3, the second
17 paragraph describes the intake structure and the
18 cooling water discharge systems.

19 HEARING OFFICER VALKOSKY: Okay. Thank
20 you, Mr. Ringer.

21 Mr. Carroll, does applicant have any
22 objection to further specifying the definition of
23 the project in condition waste nine?

24 MR. CARROLL: No, we do not.

25 HEARING OFFICER VALKOSKY: Thank you.

1 Ms. Minor?

2 MS. MINOR: No further questions.

3 HEARING OFFICER VALKOSKY: Okay.

4 Mr. Ringer, at this time I've got a question.

5 You discussed in relation to paragraph
6 three of waste nine as proposed by the City and
7 County of San Francisco your agreement with this
8 statement concerning remediation, the whole
9 paragraph deals with remediation, the third
10 paragraph. Page four of Exhibit C of Ms. Bach's
11 testimony?

12 THE WITNESS: Right. Yes, I do agree
13 with that.

14 HEARING OFFICER VALKOSKY: Okay. Do you
15 think it's either appropriate or desirable to
16 include that paragraph as in addition to your
17 existing condition waste five or other condition,
18 if that's not the right one?

19 THE WITNESS: The only problem I see is
20 that if you included this language in waste
21 nine --

22 HEARING OFFICER VALKOSKY: Waste five.

23 THE WITNESS: Five?

24 HEARING OFFICER VALKOSKY: Waste five.

25 THE WITNESS: Okay.

1 HEARING OFFICER VALKOSKY: I believe
2 that is your remediation condition. If not,
3 please correct me.

4 THE WITNESS: I'm not sure exactly how
5 you would craft the verification to verify that
6 concurrent with said construction, the presence of
7 the new power plant would not impede remediation.
8 For all practical matters, the Regional Board is
9 operating this way. They do not want to see any
10 construction take place that would, in fact,
11 preclude any opportunities for future remediation
12 requirements, to the extent that that's an ongoing
13 process.

14 Conceptually, I mean, I don't have a --
15 no problem with concluding this. I don't know how
16 you'd verify it.

17 HEARING OFFICER VALKOSKY: Well,
18 wouldn't any verification be contained in any
19 reports filed?

20 THE WITNESS: Well, we could require
21 periodic reports.

22 HEARING OFFICER VALKOSKY: No, I mean in
23 the reports that you're requiring already.

24 THE WITNESS: No, the waste five reports
25 are just if they run into stuff that they don't

1 know about. And that, according to the
2 requirements of waste five, that would have to be
3 taken care of at that time anyway. If anything, I
4 mean, regardless of where it's placed, I don't
5 think there is -- I don't envision there being a
6 possibility that somebody would -- any of the
7 agencies would knowingly let something occur that
8 would preclude future remediation. That would
9 only be found after the fact.

10 HEARING OFFICER VALKOSKY: Okay. Then
11 let me put it this way. Is it in your opinion
12 necessary to include this in waste five or in
13 other conditions, and by this I refer to the third
14 paragraph?

15 THE WITNESS: Sometimes protocols are
16 added to conditions as sort of a statement of
17 purpose or statement of fact, if you will. I
18 don't have any objection, if this were added as a,
19 I don't know if you want to call it a protocol or
20 some sort of introductory part of the condition
21 that leads under the condition, and in and of
22 itself, sort of sets the stage for how the
23 activities will be managed.

24 But it doesn't in and of itself
25 necessarily need to be verified.

1 HEARING OFFICER VALKOSKY: Okay, thank
2 you for that.

3 Mr. Carroll, under the scenario that
4 Mr. Ringer just described, would applicant have
5 any difficulty with adding the third paragraph of
6 Exhibit C of Ms. Chase's testimony?

7 MR. CARROLL: I don't think so, although
8 I just want to clarify that what we're talking
9 about is, as the third paragraph currently exists
10 in the context of the entire proposed condition
11 from the City, it refers to the entire project
12 site. It sounds like what we're talking about is
13 taking it out of that context and putting it into
14 the context of the project -- the Unit Seven
15 project.

16 HEARING OFFICER VALKOSKY: Yes, I think
17 that's correct.

18 MR. CARROLL: And its pertinent
19 facilities, the discussion we just had about what
20 the project is.

21 HEARING OFFICER VALKOSKY: We are -- And
22 my discussion, talking about only Unit Seven and
23 the proposed facility.

24 MR. CARROLL: Yes. We would not object
25 to that.

1 HEARING OFFICER VALKOSKY: Okay.

2 MR. CARROLL: Under those circumstances.

3 HEARING OFFICER VALKOSKY: All right.

4 Thank you. I don't need to go any further on
5 that.

6 Mr. Rostov?

7 MR. ROSTOV: Okay.

8 Good afternoon.

9 THE WITNESS: Good afternoon.

10 CROSS-EXAMINATION

11 BY MR. ROSTOV:

12 Q The first question is about the --
13 during your testimony -- I think I just missed
14 this -- you read through some -- you're saying
15 more information was needed, and then Mr. Carroll
16 asked you a question about de-watering that you
17 said was in soils and water.

18 I'm just curious about the more
19 information related to waste management. Could
20 you just slowly go through that.

21 A Okay. In condition of certification
22 waste six, it refers to the preparation of a final
23 site mitigation and implementation plan in
24 accordance with DTSE comments. The DTSE comments
25 that I refer to there are contained in a July 2,

1 2001 comment letter that has been docketed, I
2 guess on July 11th.

3 Paragraph two, that talks about
4 groundwater in their comments, say that it is
5 important to evaluate the impacts of the watering
6 activities. The evaluation should identify
7 whether it is necessary to implement control
8 measures to minimize the amount of water being
9 extracted and then determining how to dispose of
10 the extracted groundwater. The evaluation should
11 be contained in a revised SMIP.

12 Q Well, I was interested in things that
13 related just to waste management, not to --
14 Sorry -- not to soils and water.

15 A So could you --

16 Q You had a list where you discussed that
17 more information was needed. I can point where
18 you were reading from, if you want. I think it
19 was this list.

20 A Okay.

21 Q And I just didn't hear it all, so I
22 just --

23 A Again, as part of that letter, part of
24 it would be a more detailed description of the
25 excess fill material and discussion of criteria

1 for disposal of that fill material.

2 Q Okay, and that's the only information in
3 that letter that relates to waste management?

4 A That's the only information in the
5 letter that requires any further information.
6 Actually, they do need to give us, for instance,
7 construction drawings of the construction
8 contractor's hazardous waste storage area, things
9 like that.

10 Q Okay. And then during your testimony, I
11 think you said that Unit Seven, the project area
12 for Unit Seven, that part of the whole site has
13 been characterized to DTSE's satisfaction; is that
14 true?

15 A Yes.

16 Q So waste six requires a site mitigation
17 and implementation plan to be submitted when?

18 A Now, that's the change that I made at
19 the beginning of my testimony. It currently
20 states 45 days prior to ground disturbance, but
21 with the change, I'm proposing now 60 days prior
22 to ground disturbance.

23 Q Well, the question is, if all of the
24 information is available now, why isn't the site
25 mitigation and implementation plan done right now

1 and made available so it could be a part of these
2 hearings?

3 A Part of the information that goes into
4 the preparation of that plan is not only the
5 characterization of the site itself, but the more
6 specific areas that will be dug out: final
7 engineering drawings, exactly how much -- what
8 quantities of earth need to be moved where, things
9 like that. So it's typical that a lot of the
10 engineering specifications in a project like this
11 are not done at this time and kind of proceed in
12 an ongoing fashion.

13 Q So in other words, the public won't be
14 able to -- After these hearings are completed, the
15 public won't have an opportunity to comment on the
16 final site mitigation and implementation plan?

17 MR. WESTERFIELD: Well, I object to that
18 question. I mean, I think the plan is part of a
19 process by the City of San Francisco. Whether the
20 public comment or not is probably defined by their
21 ordinance.

22 MR. ROSTOV: As part of waste six. I'll
23 amend my question.

24 THE WITNESS: Well, as part of waste
25 six, they have given us a draft plan and some

1 proposed revisions of that plan. We know in
2 general what sort of remediation measures are
3 being discussed. For instance, they've discussed
4 that the major driver was going to be metals
5 levels in the soil.

6 These will be more characterized as to
7 what those levels are. If they're hazardous, they
8 will be taken off site to an appropriate landfill.
9 Similarly, PAHs, total petroleum hydrocarbons and
10 what-not will also be characterized more exactly
11 as to exact levels. I think what they've done is
12 they've given us an estimate of the maximum amount
13 of the soil activity contaminated, and we've done
14 our analysis based on a worst case, if you will.

15 BY MR. ROSTOV:

16 Q I thought I heard -- I'm sorry, I'm
17 afraid his name -- but Mirant's witness in waste
18 management say that the original site mitigation
19 and implementation plan they submitted wasn't
20 sufficient and that they were going to do one into
21 the future. So now you're saying that you base
22 your analysis on the original plan submitted by
23 Mirant?

24 A Well, there are certain parts of the
25 original plan that the City had commented on and

1 required additional investigations, and they have
2 given the City their investigative plan and they
3 have reviewed that. So there are parts of it,
4 yes, that needed to be beefed up a little bit.

5 But as far as our understanding of, in
6 general, what sorts of mitigation will take place
7 at the site I believe remain intact.

8 Q Okay. And you also testified that the
9 Water Board's remedial action plan will come out
10 later this year or next year; is that --

11 A There are currently investigations being
12 done. The results of those investigations I
13 believe should be available by the end of the
14 summer. Following that, there will be a
15 description of the possible remedial activities
16 that could be applied, and then based on a review
17 of those remedial activities ranking, then a
18 remedial action plan will be the final document
19 that comes out of that process. And yes, that
20 will be sometime towards the beginning of next
21 year.

22 Q So now I don't understand: If the Water
23 Board hasn't decided what the remedial action plan
24 is for the site, how do we know in general what
25 needs to be done in terms of remediation at the

1 facility?

2 A Well, when I refer to the remedial
3 action plan of the site, the Water Board and PG&E
4 are concerned with the entire Potrero site, not
5 just the Unit Seven site. The Unit Seven site was
6 the subject of this SMIP and has been the subject
7 of DTSE review and Regional Board review up to
8 this point.

9 Q So right now the analysis is incomplete,
10 but it will be completed into the future; is that
11 correct?

12 A For the entire facility site, yes.

13 Q So the Water Board has completed the
14 analysis for the Unit Seven site?

15 A I believe that the bulk of the
16 investigations that are ongoing are to look at the
17 question of whether or not at the northeast corner
18 migration is occurring off-site, and that for the
19 Unit Seven site, DTSE in particular sometime ago
20 said that they had no concerns about the
21 characterization of the Unit Seven site.

22 Q But the Water Board's part of the
23 remedial action plan for the Unit Seven site, is
24 that completed or do you have a draft of it that
25 you analyzed for the voice management section?

1 A I'm not -- I don't know if the Water
2 Board is segregating the Unit Seven site from the
3 entire site when they talk about their remedial
4 action plan. In my discussions with Vic Pal of
5 the Board he has indicated to me that, again,
6 construction and remediation could occur
7 concurrently, and that one of their major concerns
8 is that they don't want any activities to preclude
9 the opportunity for future remediation. So that
10 would be done with Unit Seven construction in
11 mind.

12 Q Okay. Just to be clear, it was your
13 intention today to present your testimony and have
14 this topic area closed, based on your testimony;
15 is that correct?

16 A The scope of my topic, yes. The scope
17 of waste management as I presented it.

18 Q So is it your opinion that the public
19 and the intervenors in general shouldn't have an
20 opportunity to assess the remedial action plan and
21 the site mitigation and implementation plan during
22 the hearing process?

23 A To the contrary. The remedial action
24 plan is something that will be available for
25 public discussion as part of the Water Board's

1 process.

2 Q During the CEC's process, excuse me.

3 A During the CEC's process --

4 Q The hearing process that we're in right
5 now.

6 A I believe that material that has been
7 presented by the applicant and staff together
8 present the public with a fair idea of what is
9 proposed to be done at the site with the waste.

10 Q I have a different topic now. As you
11 know, the FSA mentions that there will be on-site
12 brick and concrete crushing for recycling as fill,
13 and that's on page 5.13-8.

14 The question is did you analyze the
15 environmental impacts of this on-site crushing of
16 brick and concrete?

17 A There is -- I did not analyze the air
18 impacts, for instance. As far as the actual
19 crushing of bricks on site, there are no waste
20 disposal impacts if it's not going to be disposed
21 on-site. If it's used as fill, again, I say that
22 it may be used on site, depending on the
23 composition of the concrete. It's my
24 understanding that the applicant will -- There are
25 a couple of things that have to do with that; that

1 is, where the concrete comes from, where the brick
2 comes from, whether or not there appears to be
3 staining, etc.

4 So those are the two factors that have a
5 bearing on whether or not they would be used on
6 site.

7 Q Okay. So you just testified that you
8 didn't analyze the air impacts; is that correct?

9 A Not under waste management, no.

10 Q Okay. And are there other environmental
11 impacts besides air that you didn't consider?

12 A Well, by definition I wouldn't have
13 considered anything except waste management
14 impacts.

15 Q Okay. Also today we learned that, and
16 you talked about it briefly on page 5.13-12, "The
17 applicant also expects that there will be about a
18 hundred tons of excess concrete that will be
19 generated during the course of construction." And
20 the applicant's witness also testified that this
21 may be recycled on site, which I would assume
22 means concrete crushing again.

23 Did you analyze the air impacts of that
24 concrete crushing?

25 A I didn't analyze air impacts in any of

1 this testimony.

2 Q Okay. If the concrete debris is not to
3 be recycled on site -- in other words, be
4 crushed -- it's supposed to go to the concrete
5 recycling plant at Third and Cargo Way; is that
6 your understanding?

7 A Yes.

8 Q Did you analyze the air impacts from
9 concrete crushing at Third and Cargo Way, which is
10 within a mile of the Unit Seven project?

11 A I did not analyze the air impacts of any
12 aspect of this project, on site or off site.

13 Q Okay. Do you know if anybody did,
14 relating to brick and concrete crushing?

15 A With respect to the brick and concrete
16 crushing that occurs on site, that would be in the
17 air quality section. I believe that was included
18 in the applicant's estimate of particulate matter
19 from on site.

20 Q Do you know that for a fact, or --

21 A That's my understanding.

22 Q Okay. Well, we'll pick it up in air
23 quality.

24 Also, in the waste management section,
25 the FSA also discusses creation of waste from

1 operations. And then it skips into impacts on
2 existing waste disposal facilities. Did you
3 consider the transport of wastes, such as
4 contaminated soil, wastewater to waste disposal
5 facilities?

6 A What aspect of transportation?

7 Q The aspect of having trucks carrying
8 contaminated soil and the potential for that
9 contamination to be spread, the waste management
10 aspects.

11 A Well, there are no particular waste
12 management aspects. There would be transportation
13 aspects of how many trucks you need and how many
14 trips, which would be in the transportation
15 section. The question of whether or not these
16 trucks would be covered would be covered under air
17 quality.

18 And that would go back to
19 transportation. They would look not only at how
20 many trips and what-not, but the effect that that
21 has on the traffic system.

22 Q Okay. I think I just have a couple more
23 questions. In your environmental justice section,
24 which is on page 5.13-14, you conclude that "the
25 cumulative impacts of waste management will be

1 insignificant."

2 MR. WESTERFIELD: I'm not sure where
3 you're --

4 THE WITNESS: Eighteen.

5 MR. WESTERFIELD: Eight --

6 MR. ROSTOV: Sorry, that was my typo.

7 Page 5.13-18.

8 MR. WESTERFIELD: Okay.

9 BY MR. ROSTOV:

10 Q The FSA concludes "cumulative impacts
11 will be insignificant"; is that correct? On
12 environmental justice?

13 A Correct.

14 Q Did this consider the air impacts of
15 concrete and brick crushing on site?

16 A Air impacts?

17 MR. CARROLL: Excuse me. This isn't my
18 witness, but I'm going to object on behalf of all
19 of us. He's testified five times that he didn't
20 look at air quality impacts, and we could be here
21 all day.

22 MR. ROSTOV: Okay. No, that was my last
23 question on that topic.

24 HEARING OFFICER VALKOSKY: At this
25 point, Mr. Ringer, please just answer the

1 question.

2 THE WITNESS: The answer is --

3 HEARING OFFICER VALKOSKY: Did you
4 consider air quality impact?

5 THE WITNESS: No.

6 HEARING OFFICER VALKOSKY: Thank you.

7 MR. ROSTOV: Okay. Then I have one more
8 question on a different topic.

9 BY MR. ROSTOV:

10 Q On page 5.13-18, there is a comment by
11 San Francisco Baykeeper, and they say, "Neither
12 the staff nor applicant" -- and there's a (sic) --
13 "has not completed an evaluation of ecological
14 risks posed by disturbing contaminated sediments
15 resulting from dredging."

16 And then your response is that the
17 intake and discharge structures were moved to new
18 locations that were less impacted. But the
19 question still stands: Did the staff consider the
20 ecological risks posed by disturbing contaminated
21 sediments resulting from dredging?

22 A The waste management staff did not. So
23 that would be a question for biological resources.
24 I probably should have expanded my paragraph to
25 include that statement.

1 MR. ROSTOV: Okay, thank you.

2 HEARING OFFICER VALKOSKY: Mr. Ramo?

3 MR. RAMO: Mr. Valkosky, I'm prepared to
4 go ahead, if it's your wishes, but it's been two
5 hours since our last break and we've had no lunch
6 break. And I'll dive in, if that's the preference
7 of the committee, but I wonder whether we should
8 take a break at this point.

9 MR. WESTERFIELD: Mike has just told me
10 he'd just as soon do it.

11 HEARING OFFICER VALKOSKY: Can we go off
12 the record, please.

13 MR. WESTERFIELD: Okay.

14 (Brief recess.)

15 CROSS-EXAMINATION

16 BY MR. RAMO:

17 Q Mr. Ringer, just to clarify one more
18 time to make sure I understand, the Regional
19 Board's remedial action project, is that for the
20 entire Potrero site, or is it just for the Unit
21 Seven project activities?

22 A It's my understanding that the remedial
23 action plan and the Regional -- Well, let me back
24 up. The Regional Board has been designated as the
25 lead agency for the entire site owned by PG&E.

1 PG&E requested this, so the remedial action plan,
2 as part of that, will be for the entire site.

3 Q And it's your testimony that you expect
4 this remedial action plan for the entire site in
5 January or early next year; is that correct?

6 A Correct.

7 Q And based on your experience with the
8 Energy Commission's review of projects, would it
9 be safe to say that it is likely that the
10 Commission would not make a certification decision
11 in this case before 2003?

12 A You mean in general, or based on the
13 remedial action plan schedule?

14 Q Based on where we are in the schedule in
15 this case -- We're in late July and we're
16 beginning hearings and we have no scheduled
17 hearings -- and given regulatory requirements
18 allowing public comment on proposed decisions --

19 HEARING OFFICER VALKOSKY: You know, we
20 can shortcut this right now. I would agree with
21 that statement.

22 MR. RAMO: Okay.

23 HEARING OFFICER VALKOSKY: Okay.

24 BY MR. RAMO:

25 Q Are you also aware the applicant has

1 expressed concern over a proposed staff condition
2 that would require them to begin construction
3 within a year of certification?

4 A I haven't been keeping track of that
5 myself.

6 HEARING OFFICER VALKOSKY: Okay, and
7 again, I'm just clarifying, trying to speed things
8 along, that, Mr. Ringer, is contained in the
9 construction milestone portion of the compliance
10 plan. Okay, I believe that's what you're
11 referring to.

12 BY MR. RAMO:

13 Q Then let me represent to you that they
14 have expressed some concern over that. Given
15 those facts, practically, there is little burden
16 to the applicant in requiring that a remedial
17 action plan for the entire site precede
18 construction; isn't that correct?

19 A Well, that may be --

20 MR. CARROLL: I'm going to object to
21 this witness answering a question about what
22 burden may or may not be placed on the applicant.
23 I don't think he has any basis for answering that
24 question.

25 HEARING OFFICER VALKOSKY: Understood

1 the objection.

2 Just rephrase the question.

3 BY MR. RAMO:

4 Q Are you aware of, in those
5 circumstances, any burden that might apply to the
6 applicant in such a condition?

7 A Well, in fact, the condition, as you
8 stated, applies to the entire site. The pace of
9 the cleanup during different portions of the site
10 probably will occur at different times. So to the
11 extent that portions outside the Unit Seven area
12 might take quite some time to clean up or be quite
13 later, I can see where it would cause problems for
14 the applicant.

15 Q Then let me clarify my question. The
16 question wasn't completion of the plan in terms of
17 its implementation, I meant the finalization of
18 what the plan is.

19 A My response stays the same. There is no
20 reason in my mind to await a finalized plan if it
21 doesn't have any bearing on the Unit Seven portion
22 of the site.

23 Q But, in fact, practically, plans can be
24 finalized years before the site is constructed, if
25 my representations are correct; isn't that right?

1 A Yeah, I would agree with that.

2 Q It is your testimony, is it not, that
3 due to the concentration of metals in the soil at
4 the area where this Unit Seven is going to be
5 constructed, that all soil to be excavated would
6 potentially be considered hazardous; isn't that
7 right?

8 A I think that's a worst-case assumption
9 that we're operating under.

10 Q But that was your testimony, wasn't it?

11 A Well, I just said that's a worst-case
12 operation that we -- I mean, assumption that we
13 are operating under.

14 Q Well, did you mention worst-case
15 assumption in your testimony?

16 MR. WESTERFIELD: Mr. Ramo, if we're
17 going to quibble about exactly what he said for
18 the prior question, maybe we should go back and
19 try and find the answer somehow in the record.

20 BY MR. RAMO:

21 Q Well, let me turn you to page 5.13-9.
22 Do you have that page before you?

23 A Yes.

24 Q And let me refer you to the last
25 paragraph on the page, and do you see the sentence

1 that says -- It's the second sentence of that
2 paragraph that says, "Based on the concentrations
3 of metals in the soil, as indicated from existing
4 analytical data, all soil that would be excavated
5 would potentially be considered hazardous waste if
6 disposed off site."

7 Do you see that sentence?

8 A Yes.

9 Q Your testimony hasn't changed from that,
10 has it?

11 A No.

12 Q And your reference to the more
13 contaminated areas in the northeast corner of the
14 facility was not intended to say that there is no
15 contamination elsewhere in the site, was it?

16 A Correct.

17 Q And so you aren't asserting or
18 suggesting that there is no contamination in the
19 construction area, are you?

20 A You're correct.

21 Q Okay. Now, one of the documents you
22 relied on, I believe, was the URS final offshore
23 sediment characterization report for Potrero power
24 plant dated May 18th, 2001; is that correct?

25 A Yes.

1 Q And you reviewed the entire document in
2 preparing your testimony; is that correct?

3 A Yes.

4 MR. RAMO: I have some excerpts of
5 tables and figures that I want to pass out from
6 that report to everybody.

7 And, Mr. Westerfield, I'll ask you to,
8 when it comes to you, get a copy to the
9 Commissioner if that's okay.

10 MR. WESTERFIELD: Yes.

11 MR. RAMO: Let me just say for the
12 record that what I'm passing out are figures, I
13 believe it's 30 and 48, and two pages from table
14 five.

15 The first excerpt I'm going to use in
16 questioning Mr. Ringer is figure 30. Figure 30 is
17 titled Surface Total PAH concentrations.

18 BY MR. RAMO:

19 Q Mr. Ringer, do you have figure 30 before
20 you?

21 A Yes.

22 Q Now, is it correct that in your
23 testimony you indicated that there were three high
24 PAH concentrations that were found in July 2000.
25 I can give you a page reference if that would help

1 you.

2 A Okay.

3 Q I believe it's page 5.13-7, and I'm
4 looking at the second paragraph under Offshore
5 Sediment Characterization, the first sentence.

6 A Could you repeat that?

7 Q Page 5.13-7, and the second paragraph
8 under Offshore Characterization, starting at the
9 sentence that begins, "Sampling results show that
10 showed that high PAH concentrations"; do you see
11 that?

12 A Yes.

13 Q And that's still your testimony; is that
14 correct?

15 A Yes.

16 Q Okay. Can you identify just generally
17 on figure 30 -- I realize this is a figure from a
18 different sampling episode, but just using the
19 map -- can you identify generally where the three
20 areas of high concentration were?

21 A Which of the tables that you passed out
22 correspond to this map as far as --

23 Q Well, what I could do is give you the
24 whole document if you don't have it, and --

25 A No, I have the whole document. There are

1 lots of tables, many pages of tables, and many
2 figures. So the key here is to try to figure out,
3 if you'd tell me for each of these PV-21, you
4 know, PV-8, all of those.

5 Q Well, according to your testimony at
6 5.13-7 it appears that two areas, with one
7 offshore at the northeast corner of the site, just
8 north of the intake structure of Unit Three, and
9 one was offshore of the southern central portion
10 of the shoreline, near the existing Unit Three
11 outfall; would that be fair to say those were two
12 areas that you were referring to?

13 A Right. It looks like there are some
14 numbers associated with these on the table here,
15 so it looks like BP-21 at one point at 1.79
16 million was fairly high, so that would be in the
17 sort of central portion.

18 Q You don't recall at the moment what the
19 third area was? I can proceed if you don't.

20 A Okay. Yeah, go ahead.

21 Q Okay. You indicate in your testimony
22 that these were high levels of concentration, and
23 I wondered what you meant by the word "high."

24 A Well, generally higher. The whole
25 picture shows sort of decreasing levels as you go

1 outward, and basically increasing as you go down
2 in depth. So in general, I mean to characterize
3 the area as having the highest concentrations near
4 shore and deeper near shore.

5 Q Is there any environmental significance
6 to the fact that some areas are high in PAH or
7 were you just noting some interesting statistical
8 curiosity?

9 A I was just trying to characterize the
10 levels that were found in general terms.

11 Q Would you say it was fair to say that
12 from an environmental standpoint, based on your
13 knowledge of sediment chemistry, that these are
14 levels that ought to be of concern and require
15 further investigation?

16 A Well, I think it depends on -- By
17 further investigation do you mean more exact
18 notations of their levels, or --

19 Q Well, I'm not trying to be tricky here.
20 I gather, from all of the attention given to the
21 sites in these multiple studies that this isn't
22 just an academic exercise, that from a
23 professional standpoint there is some concern when
24 a chemical like poly aromatic hydrocarbons or
25 total petroleum hydrocarbons or some other

1 constituents are found at these elevations.

2 Am I wrong on that?

3 A Well, part of the concern here is where
4 to locate structural facilities.

5 Q To locate --

6 A Locate structures that are proposed to
7 be constructed, so that's the concern here, among
8 other things.

9 Q And that would be of concern if these
10 chemicals might be mobilized; otherwise, why are
11 we concerns?

12 A Correct.

13 Q And that's because these are toxic
14 chemicals, correct?

15 A Correct.

16 Q And there's concern that there might be
17 some harm resulting from their mobilization.

18 A Correct.

19 Q Okay. Now, as you indicated just a
20 second ago, generally the results of this study
21 seem to suggest that contamination increased with
22 depth; is that correct?

23 A Yes.

24 Q And that would be -- Would it be fair to
25 say that that would be evidence that would allow

1 an inference that contamination might be due to
2 what we've been terming as historical or past
3 activities, perhaps even decades ago; is that
4 correct?

5 A That's an explanation, yes.

6 Q But it's also true that while that was
7 generally true, the points closest to the Unit
8 Three discharge are more heavily contaminated on
9 the surface; isn't that correct?

10 A Do you have some specific borings that
11 you can point me to for that?

12 Q For example, if you look at the borings
13 labeled 21 and 26, those are the two tables I
14 passed out, 26 and 21 --

15 MR. WESTERFIELD: That's tables 26 and
16 21?

17 MR. RAMO: Excuse me, these are both in
18 table five, these are excerpts of table five.

19 MR. WESTERFIELD: Okay.

20 MR. RAMO: And in table five they list
21 by depth the results of chemistry analysis for
22 borings called PP 21 and PP 26. So you have PP 21
23 from 0 to 1 feet, 2 to 3 feet, 3 1/2 to 4 1/2, 6
24 to 7 --

25 BY MR. RAMO:

1 Q And my look at that suggested that the
2 most contaminated sediments were at the surface.
3 I want to see if you share that view after looking
4 at the table.

5 MR. WESTERFIELD: At the surface where?

6 MR. RAMO: At 21 and 26.

7 MR. WESTERFIELD: Okay.

8 THE WITNESS: Well, on 21 you can see
9 the total PAH is -- Yeah, that's correct.

10 BY MR. RAMO:

11 Q And do you agree that's also correct for
12 26, if you look at PAH?

13 MR. WESTERFIELD: Hold on a second. I
14 never got that table, apparently. Can we wait a
15 moment?

16 MR. RAMO: Sure.

17 MR. WESTERFIELD: No, I only got one
18 table.

19 Thank you.

20 MR. CARROLL: And I apologize, but when
21 Mr. Westerfield gets his table, can you please
22 orient us? I've lost track of where we are within
23 the table.

24 MR. RAMO: He said it was correct for
25 point 21, and I've asked him about boring PP 26.

1 MR. WESTERFIELD: I have to say I'm lost
2 too. There are four different columns for PP 26.

3 MR. RAMO: Right. PP 26 --

4 MR. WESTERFIELD: Oh, I see --

5 MR. RAMO: Well, I'm asking your expert
6 whether he can read the table.

7 MR. WESTERFIELD: I see, thank you.

8 MR. RAMO: It's also correct.

9 BY MR. RAMO:

10 Q So from this I guess is the -- I'm not
11 sure if it's the converse or the inverse, but if
12 it's true that if deeper sediments are
13 contaminated, that allows at least an inference
14 that it might be due to historical activity.

15 Would it also be true that if the most
16 contaminated sediments are on the surface, that
17 might reflect, or at least provide evidence of the
18 inference that it was more recent activity causing
19 the contamination?

20 A Yeah. You could have a situation where
21 the deeper sediments, although historical, are
22 deeper because there was fill placed over those in
23 the remaining -- in the intervening period, and in
24 the case that you just noted, where the higher
25 readings are in the shallower section, that there

1 wasn't as much material placed over them in the
2 intervening period. So I think you have to know
3 the historical nature of the fill activity as
4 well.

5 Q Oh, I agree there might be a lot more
6 information, I just wondered whether that allows
7 an inference that it might be due to recent
8 activity.

9 A Well, it's certainly something to
10 explore, I guess.

11 Q Now, would it also be of interest that
12 the concentrations seem to get higher as you
13 approach Unit Three and seem to become less and
14 less as you get away from Unit Three?

15 A Based on this figure that you've handed
16 out?

17 Q Yes.

18 A This figure is only surface, from one to
19 three feet.

20 Q Correct. I'm just asking whether that
21 would be relevant evidence as to what the source
22 might be, or do you consider it irrelevant that
23 the concentrations decrease, at least in Unit
24 Three, in your professional opinion?

25 A Well, given that these are surface

1 concentrations and we had already agreed that the
2 concentrations in general in some of the areas
3 increase as you go deeper, I think it's safe --
4 The whole point of this is to try to guide where
5 the construction of the new facility is to take
6 place, and secondarily, to try to figure out some
7 inference or make some inferences as to the cause.

8 So to the extent that some of these, for
9 instance, are associated with the piers and what-
10 not, that's something to consider, in general.
11 And if it's higher near Unit Three, you know,
12 there could be various reasons for that.

13 Q Isn't it possible that if the
14 contamination is higher at the surface and higher
15 the closest you get to Unit Three that it might be
16 related to the Unit Three discharge?

17 A Not to the extent that the material
18 being investigated is not part of the Unit Three
19 discharge particularly; i.e., these are PAH
20 concentrations and the Unit Three discharge
21 comprises once-through cooling water, so, I mean,
22 if you're -- we know what's coming into the
23 cooling water is bay water and what's going out is
24 pretty much the same thing, so I don't know if
25 you're asking whether or not the operation of the

1 unit historically contributed to the PAH levels
2 because of its discharge, I don't think you can
3 make that conclusion.

4 Q So your professional opinion is that
5 it's impossible that this has anything to do with
6 Unit Three.

7 A Well, this is the intake for Unit Three,
8 correct?

9 Q No, I was talking about the discharge.

10 A The discharge?

11 Q Yes.

12 A Well, still, I mean, if Unit Three were
13 adding PAHs as part of its process, you know,
14 that's certainly something to consider, but given
15 that it just uses bay water and returns it, I
16 think you'd have to really question, you know,
17 what that was.

18 Q You'd have to find some other way that
19 PAHs are getting into the Unit Three discharge
20 other than sucking up bay water, correct?

21 A Right.

22 Q Do you know if that investigation has
23 been conducted?

24 A Well, the northeast area, certainly,
25 that's part of the ongoing investigations. And,

1 again, I'm not privy to exactly what the Regional
2 Board is requiring in terms of continuing
3 investigation, so, you know, I couldn't speak to
4 having certain knowledge whether or not this area
5 is or is not being included in the investigations
6 as to what might be migrating from either
7 offshore --

8 Q You didn't investigate that, did you?

9 A No.

10 Q Isn't it correct as part of this
11 project, the Unit Three discharge is going to be
12 sent further out in the bay with a new piping and
13 a new diffuser?

14 A Yes.

15 Q So if, in fact, there is a source
16 connected to the Unit Three discharge, the result
17 of this project would be to send that
18 contamination further out into the bay; isn't that
19 correct?

20 A I thought we just sort of agreed that it
21 really wasn't probably from Unit Three since Unit
22 Three doesn't add PAHs to its discharge, it's just
23 using water. And the same is true with the new
24 discharge, it's just using once-through cooling
25 water, so whatever it brings in from the bay in

1 terms of water it's returning to the bay. It's
2 not adding any PAHs, and those PAHs -- I mean --
3 Yeah, we'll just stick with that.

4 Q I understand you dispute the likelihood
5 that Unit Three is discharging PAHs. If Unit
6 Three were discharging PAHs, building a pipe to
7 send it further into the bay might be a
8 significant problem; isn't that correct?

9 A If Unit Three is the source of any
10 contamination, yes, then wherever it's discharged,
11 it would just transfer the location of the
12 problem, for instance. You're correct.

13 Q Is Unit Three an old facility,
14 relatively?

15 A Relatively.

16 Q To your knowledge, has there been any
17 investigation as to whether there are any cracks
18 in the piping involving Unit Three that might
19 allow the infusion or leaching of contamination
20 into the discharge?

21 A I haven't looked at that myself.

22 Q Do you know if the NPDES permit requires
23 monitoring of PAHs?

24 A I don't know that for a fact.

25 Q Now, are there any sources of fuel or

1 other sources of PAHs that are now on site?

2 A I don't know whether or not the storage
3 tanks currently contain fuel or not.

4 Q If the storage tanks contain diesel,
5 would that be a potential source of PAH?

6 A More likely to be a source of total
7 petroleum hydrocarbons rather than PAH.

8 Q Have you done any investigation to
9 determine if there are on site any sources of
10 materials that might be a source of PAH, other
11 than what's buried in the gas, old gas --

12 A No, not other than what's buried, no.

13 Q Okay. Now, it's your testimony that
14 moving the discharge pipes to the south would
15 minimize the sediment contamination mobilization
16 issues; is that correct?

17 A Moving the pipes to the south in
18 conjunction with the different construction that's
19 to be proposed.

20 Q And when you say minimize, is it your
21 testimony that there would be zero mobilization of
22 toxic chemicals or is it that it would be less?

23 A It would be much less. Rather than
24 burying the pipes, you would have an initial layer
25 of fabric placed over the sediment to prevent the

1 sediment from being mobilized, and then on top of
2 that you would place the pipes and all the various
3 construction materials and the marine mattress, so
4 that would serve as a cap, an engineered cap, if
5 you will, to prevent any further movement of the
6 sediments.

7 Q Has that cap ever been employed before?

8 A I'm not intimately familiar with the use
9 of these in other projects.

10 Q So, from your personal experience, you
11 don't know if this cap lasts a year, five years,
12 ten years?

13 A I have not investigated that.

14 Q And did you evaluate any typical
15 literature to see if there is any reports on the
16 effectiveness of this cap?

17 A No, I relied on the comments of the
18 Department of Toxic Substances control when it
19 said their concerns were pretty much allayed by
20 this new construction.

21 Q Okay. So that's your sole basis for
22 believing the cap would be effective.

23 A That and the BCDC comments.

24 Q Did DTSE indicate to what extent this
25 would reduce the mobilization of contaminants?

1 A DTSE regards this in the same way they
2 would an engineering cap such that to the extent
3 that you want to prevent mobilization of certain
4 substances, one effective way to do that is just
5 to put a cover over them, whether it be, for
6 instance, on the land side, if you don't want
7 water infiltration into an area you can cap it,
8 whether it be with concrete structures or
9 whatever, so this is the same thing.

10 Q Has DTSE ever successfully employed a
11 cap in sediments?

12 A They have probably never attempted it,
13 since they're not the ones who do that. They just
14 approve whether or not such caps are used.

15 Q To your knowledge, have they ever
16 approved a cap in sediments before?

17 A I don't know whether they have or not.

18 Q Now, in addition to the capping, I
19 believe your testimony is that you felt that the
20 potential threat of mobilizing this contamination
21 would be reduced by moving the pipes south; is
22 that correct?

23 A Yes.

24 Q And is it fair to say that you didn't do
25 any kind of quantitative analysis to determine how

1 much less the contaminants would be, did you?

2 A I have not quantified the degree. I can
3 only --

4 Q Just qualitatively you feel it would be
5 much less; is that correct?

6 A Based on the changes that I've indicated
7 and location and type of construction.

8 Q Now, did you make any attempt to apply
9 sediment criteria to determine whether, while
10 less, it would be safe?

11 A I think that's --

12 MR. WESTERFIELD: Well, rather than --

13 THE WITNESS: I think that's aquatic
14 biology --

15 MR. WESTERFIELD: Yeah. I mean, Alan, I
16 know this witness did rely upon this report, he's
17 testified to that. But basically, this is an
18 aquatic biology subject or soil and water subject.
19 This witness is being presented for waste
20 management.

21 And it sounds like you're really trying
22 to get into issues that are aquatic biology issues
23 with a witness who is not even presented for that.

24 MR. RAMO: Well, if you're willing to
25 stipulate --

1 MR. WESTERFIELD: And we can spend --

2 HEARING OFFICER VALKOSKY:

3 Mr. Westerfield, and to that extent I would
4 suggest I would suggest that the witness merely
5 answer he doesn't know. He doesn't know
6 sufficiently. That is a topic covered in aquatic
7 biology, water and soils, whatever, okay? I think
8 that's the easiest way to handle that, rather than
9 attempt to answer something beyond his expertise.

10 That having been said, Mr. Ramo, how
11 much longer have you got?

12 MR. RAMO: I have just a few more
13 questions.

14 HEARING OFFICER VALKOSKY: Okay.
15 Continue, please.

16 BY MR. RAMO:

17 Q So it's fair to say you didn't make any
18 aquatic biological evaluation of what the impacts
19 from moving the pipes south or using a cap were;
20 is that fair to say?

21 A That's correct.

22 Q Okay. Now, you were in the room when --
23 I believe, correct me if I'm wrong -- when there
24 were some questions and answers going on around
25 stockpiles and berms --

1 A Yes.

2 Q -- did you happen to hear that?

3 A Yes.

4 Q Would it be fair to say that the purpose
5 of state and federal stormwater laws is to
6 segregate industrial pollutants from stormwater,
7 or is that beyond your expertise?

8 A Let me first say that I believe that --
9 Well, your question was whether it was to
10 segregate stormwater from industrial pollutants,
11 that's one thing. The other thing is, if they do
12 come in contact we want to handle the stormwater.

13 That having been said, that is an area
14 for discussion under soil and water resources, but
15 I might add as well that in their FSA, one of the
16 conditions would be for the applicant to prepare
17 and give us a stormwater pollution prevention
18 plan, which would be reviewed.

19 Q Would it be to say that for an
20 environmental justice community with an impaired
21 waterfront, that it would be appropriate for the
22 Commission to consider requirements beyond the
23 usual boilerplate requirements that say come up
24 with a stormwater plan?

25 MR. WESTERFIELD: I object to that,

1 because I don't know -- I think it's pejorative to
2 say "boilerplate requirements." I don't know what
3 you mean by "boilerplate requirements."

4 Could you be a little more specific?

5 BY MR. RAMO:

6 Q Beyond the requirement you just
7 mentioned.

8 A Well, before you ask whether or not it
9 would be in the public's interest to come up with
10 more than we usually require, I think that sort of
11 intimates that what we usually require is not good
12 enough, and I would say that given the review that
13 these plans take, both by the Commission, Regional
14 Board, DTSE, etc., and the knowledge that the soil
15 and water staff have of such plans, I'm not so
16 sure that anything further over and above what we
17 normally require is in order, necessarily.

18 Q Well, would you have a problem with a
19 condition that would require the removal of these
20 stockpiles on a daily basis during the wet season
21 and weekly, when it's not the wet season?

22 A Well, given that certain measures would
23 be employed to, a, to keep the stormwater off,
24 and, b, if the stormwater did contact it, trap and
25 properly treat the stormwater, I could envision

1 that you may have more of a potential problem with
2 daily removal than just some other time period.
3 For instance, you'd have much more movement to the
4 soil, possibly with air emissions. Maybe you'd
5 have more truck traffic than would be required.
6 Maybe you wouldn't want soil to be removed during
7 a natural rainstorm and all kinds of things come
8 into mind.

9 Q Even though you're prepared to have, you
10 were prepared to have daily removal of material
11 that's hazardous in BCDC's jurisdiction?

12 A Well, I believe that BCDC's concern is
13 construction debris and not -- such as wood,
14 paper, you know, things like that, not hazardous
15 soil.

16 Q So you'd have a problem with --

17 A That can be clarified, in fact.

18 Q So you'd have a problem with any
19 requirement that they remove soil on some periodic
20 basis?

21 A No, what I testified to is that there
22 could cause other problems, there could be other
23 problems and that would certainly have to be taken
24 into account before we made such a recommendation.

25 Q These stockpiles are basically covered

1 with plastic; is that correct? Plastic liners?

2 A There will be liners and they will be
3 covered, both.

4 Q Is there anything that requires these
5 liners to be anchored around the site?

6 A I believe there will be plans for
7 anchoring.

8 Q So you would have no problems with a
9 specific condition requiring that the plastic
10 liners be anchored around these stockpiles?

11 A I believe that's required. And I don't
12 have any problem with the condition.

13 Q Would you have any problem in requiring
14 the applicant to monitor the flow and toxicity of
15 any stormwater that gets outside the berm?

16 A I believe the stormwater pollution
17 prevention plan and, in part I defer to the soil
18 and water people, but that the plan that they
19 present to us has to cover all of these things
20 that you're talking about, and that it will be
21 reviewed by staff and it has to be approved.

22 Q Do you have any -- Based on your
23 professional experience, do you have any problems
24 with those specific requirements of monitoring the
25 flow and toxicity of the runoff that gets beyond

1 the berms?

2 A I have no particular problems with the
3 concept of monitoring.

4 Q And would you have any problem in that
5 if there's water flowing beyond the berms that has
6 industrial pollutants that the water be segregated
7 and treated sufficiently to either be discharged
8 into the bay or into the San Francisco sewer
9 system?

10 A No, I believe that we would require it.
11 And hopefully the plan would have enough detail
12 into it to where we would know that that would
13 occur.

14 Q And would you have any problem in
15 providing extra assurance to this community by
16 having those being specific conditions of
17 certification?

18 A I believe that that's something that we
19 could consider probably more appropriately in the
20 soil and water resources area, but to the extent
21 that I may or may not be part of that future
22 panel, I don't have any problem with that.

23 Q But from your waste management
24 perspective, you don't have a problem.

25 A No.

1 Q Okay.

2 MR. RAMO: I'm done. Thank you.

3 HEARING OFFICER VALKOSKY: To follow up,
4 Mr. Westerfield, just based on what Mr. Ringer
5 just said, I'd like to direct you on behalf of the
6 committee to consider those specific measures,
7 incorporate it in a condition of certification in
8 soil and water, okay?

9 I'm not saying necessarily implement
10 them, I would like staff to consider their
11 identification, their specification, and their
12 implementation, and we can deal with that in the
13 soil and water topic, okay?

14 MR. WESTERFIELD: Certainly.

15 HEARING OFFICER VALKOSKY: Thank you.

16 Any redirect?

17 MR. WESTERFIELD: No redirect.

18 HEARING OFFICER VALKOSKY: All right.

19 MR. CARROLL: Mr. Valkosky, I have just
20 a couple of questions, if I may, for this witness,
21 additional questions --

22 HEARING OFFICER VALKOSKY: Certainly.

23 MR. CARROLL: -- in response to
24 Mr. Ramo's questioning, and this will be short.

25 HEARING OFFICER VALKOSKY: All right.

CROSS-EXAMINATION

BY MR. CARROLL:

Q Mr. Ringer, Mr. Ramo has taken you and us through a fairly elaborate analysis to make the point that there are higher concentrations of PAH in the vicinity of the Unit Three discharge and has suggested that that perhaps indicates that PAH are somehow entering into the Unit Three discharge. You testified that you thought that scenario was implausible, since the processes associated with the Unit Three discharge don't provide any mechanism for that.

Are you familiar with the term "scouring" as it is applied to discharge of this type?

A Somewhat.

Q What is your general understanding of what that term means?

A Well, when a fluid comes in contact with a solid, that the force of the fluid causes the solid to be moved.

Q And would you say that it's a plausible explanation for the fact that the PAH levels are, the higher PAH levels are closer to the surface in the area of the Unit Three discharge, that the

1 Unit Three discharge itself has scoured away the
2 later deposited sediments, and that's why we see
3 the higher discharges closer to the surface in the
4 vicinity of the Unit Three discharge?

5 A That's one plausible explanation, yes.

6 MR. CARROLL: Okay, thank you.

7 HEARING OFFICER VALKOSKY: Any followup
8 on this, Mr. Westerfield?

9 MR. WESTERFIELD: No re-redirect.

10 HEARING OFFICER VALKOSKY: Well, it was
11 actually a complementary recross, but there was no
12 redirect, so I'm not sure what we'd call it, but
13 I'm just calling it questions.

14 (Laughter.)

15 HEARING OFFICER VALKOSKY: Ms. Minor?

16 MS. MINOR: No questions.

17 HEARING OFFICER VALKOSKY: Mr. Rostov,
18 Mr. Ramo?

19 MR. ROSTOV: No questions.

20 MR. RAMO: No questions.

21 HEARING OFFICER VALKOSKY: Anything more
22 for the witness?

23 COMMISSIONER PERNELL: Thank you,
24 Mr. Ringer.

25 (The witness was excused.)

1 HEARING OFFICER VALKOSKY: Does that
2 conclude your presentation?

3 MR. WESTERFIELD: Well, we would like to
4 move portions of the final staff assessment into
5 evidence, and that would be the waste management
6 chapter of the FSA, being Exhibit Three.

7 HEARING OFFICER VALKOSKY: Okay. Is
8 there objection?

9 MR. CARROLL: No objection.

10 MS. MINOR: No objection.

11 HEARING OFFICER VALKOSKY: No objection,
12 that portion of the FSA, otherwise known as
13 Exhibit Three, is received in the evidentiary
14 record.

15 COMMISSIONER PERNELL: Okay. Why don't
16 we take a 20-minute break.

17 HEARING OFFICER VALKOSKY: And we will
18 reconvene with San Francisco's testimony, the
19 final witnesses of the day.

20 (Brief recess.)

21 COMMISSIONER PERNELL: Mr. Valkosky.

22 HEARING OFFICER VALKOSKY: Thank you,
23 Commissioner. We'll finish the concluding portion
24 of the evidentiary hearing with the presentation
25 of San Francisco's witnesses.

1 Ms. Minor, if you could call and have
2 your witnesses sworn, please.

3 MS. MINOR: Yes. We have two witnesses,
4 Carol Bach and John Fetzer, and they need to be
5 sworn in.

6 THE REPORTER: Raise your right hands,
7 please.
8 Whereupon,

9 CAROL BACH and JOHN FETZER
10 Were called as witnesses herein and, after first
11 being duly sworn, were examined and testified as
12 follows:

13 MS. MINOR: We'll start with Ms. Bach
14 and then proceed to Dr. Fetzer, and to ensure that
15 Ms. Bach can leave, we will tender her for cross-
16 examination after her direct testimony, as we
17 agreed.

18 DIRECT EXAMINATION
19 BY MS. MINOR:

20 Q Please state your name, professional
21 qualifications, and educational background.

22 A My name is Carol Bach. I am the
23 assistant deputy director for Environmental Health
24 and Safety Programs at the Port of San Francisco.
25 I have a bachelors degree in zoology from the

1 University of California at Davis, and a masters
2 in biology from Western Washington University.

3 I am a registered environmental assessor
4 for the state of California and a certified
5 hazardous materials manager.

6 Q Are you the same Carol Bach who has
7 submitted written testimony in this proceeding the
8 date of the written testimony dated July 10th,
9 2002?

10 A I am.

11 Q Do you have any corrections or changes
12 to your written testimony?

13 A I do not.

14 Q Would you please briefly summarize the
15 purpose of your testimony today.

16 A The purpose of my testimony is to
17 explain San Francisco's ownership of certain
18 properties and offshore of the Potrero power
19 plant, and secondly to clarify San Francisco's
20 interest in ensuring that contaminated sediments
21 off site are properly remediated.

22 Q You have two exhibits appended to your
23 testimony, B1 and B2. Using these exhibits, would
24 you please clarify for the committee the Port's
25 ownership interest.

1 A Yes. B1 is an aerial photograph showing
2 the Potrero power plant area and offshore. The
3 photograph also shows a fence running east, west,
4 parallel with the shoreline that approximates the
5 boundary of the Port of San Francisco's ownership.

6 Exhibit B2 is a map of the Potrero power
7 plant area showing the Port of San Francisco's
8 ownership in a heavy dashed line.

9 Q Do either of these maps reflect the
10 Port's interest in offshore sediments?

11 A The Port owns offshore sediments
12 extending east from the shoreline in this area, as
13 far as Alameda County.

14 Q All right, thank you. Your testimony
15 lists a number of comments and concerns about the
16 proposed construction and remediation at the
17 Potrero site. It's not necessary to read into the
18 record all of your comments, but if you could
19 summarize them for the committee.

20 A We have three primary concerns: first,
21 that there is documented contamination on the
22 narrow strip of land and adjacent offshore
23 sediments owned by the Port; second, that there is
24 no federal or state order setting the terms or
25 time frame for remediation of those areas, either

1 on site or offshore, and that the voluntary
2 agreement between PG&E and the state regarding
3 investigation and cleanup is not clear on whether
4 that investigation and cleanup extends to offshore
5 sediments.

6 We feel strongly that it's very
7 important for the onshore and offshore
8 contamination to be remediated, and without a
9 regulatory order, construction of the proposed
10 Unit Seven, including cooling water, could have
11 the potential to impact contamination or the
12 potential to remediate.

13 Q There has been testimony already today
14 about your recommended modifications to waste nine
15 condition of certification. And Mr. Ringer, the
16 CEC staff witness, has already gone through each
17 of your recommendations and has addressed
18 comments.

19 Were you in the room during Mr. Ringer's
20 testimony?

21 A I was.

22 Q Yes. Would you please comment initially
23 by clarifying why the Port of San Francisco, as a
24 department of the City and County, is requesting
25 these modifications, and then if you have any

1 comment on Mr. Ringer's comments.

2 A The Port of San Francisco owns these
3 properties in trust for the people of the state of
4 California, and it is our concern that they be
5 appropriately remediated, and also that the City
6 and County of San Francisco and the Port of San
7 Francisco are protected from liability for that
8 remediation.

9 So do you want me to summarize the
10 conditions that we're recommending?

11 Q I actually don't believe that that's
12 necessary at this point. I think the conditions
13 are clear.

14 A Okay.

15 Q Let's look at the last condition, which
16 is -- it's one condition, but the last paragraph
17 in the condition, which is the request that Mirant
18 indemnify and hold harmless the City as well as
19 the Port. Again, clarify for the record why
20 you're requesting that that change be made in the
21 condition of certification.

22 A We wish to ensure that the City and
23 County of San Francisco and the Port of San
24 Francisco are not held responsible for
25 contamination onshore or offshore, and also to

1 ensure that that contamination is adequately
2 remediated.

3 Q Are you aware of any documentation that
4 makes it clear that PG&E has assumed
5 responsibility for the offshore contamination?

6 A I have not seen such documentation.

7 Q Okay. Does the Port routinely seek
8 indemnity and hold harmless agreements in its
9 tenant and development provisions?

10 A Yes, we do. Our standard license, lease
11 and development agreements require the tenant to
12 hold the Port harmless for contamination brought
13 to the site or caused to be released by the
14 tenant's activities or development.

15 In some cases where development may
16 encounter existing contamination, the extent of
17 financial responsibility for that is a negotiated
18 process, based on the specific facts of the case.

19 Q Earlier today there was reference to a
20 letter dated December 20th of 2001 from Yvonne
21 Meeks to PG&E to the Water Board. Is that a
22 letter that you're familiar with?

23 A I'm not familiar --

24 MR. WESTERFIELD: Excuse me, I think
25 what you really want to say is it's dated 2000,

1 not 2001.

2 MS. MINOR: Oh, thank you for that
3 correction.

4 BY MS. MINOR:

5 Q The letter is dated December 21st, 2000
6 from Yvonne Meeks to the Water Board.

7 A I'm not aware of that letter, no.

8 Q Okay. So you've never seen that letter.

9 A Mm-mm.

10 Q All right, thank you.

11 MS. MINOR: That concludes my direct
12 testimony -- her direct testimony.

13 HEARING OFFICER VALKOSKY: Thank you,
14 Ms. Minor.

15 Ms. Bach, would the applicant need any
16 sort of land use entitlement from the Port in
17 order to proceed with the project as presently
18 proposed?

19 THE WITNESS: Yes. I believe that their
20 construction would require access to that narrow
21 strip of land along the waterfront that the Port
22 owns.

23 HEARING OFFICER VALKOSKY: Okay, and
24 would that be a lease or would it be an easement
25 or exactly what?

1 THE WITNESS: I'm not sure exactly what
2 mechanism it would be.

3 HEARING OFFICER VALKOSKY: In granting
4 such entitlement, would the Port likely include
5 conditions such as the hold harmless clause that
6 you mentioned?

7 THE WITNESS: Yes, we would.

8 HEARING OFFICER VALKOSKY: Okay. So
9 that even if it were not included in one of the
10 Energy Commission's conditions of certification,
11 it would nevertheless be included in an agreement
12 with the applicant.

13 THE WITNESS: I believe so, yes.

14 HEARING OFFICER VALKOSKY: Okay, thank
15 you. Last question: Are you suggesting that the
16 applicant has any type of broader responsibility
17 for remediation of contaminants, other than those
18 which will be directly project-related, or may be
19 directly project-related?

20 THE WITNESS: This might be a question
21 of legal responsibility, but my interpretation
22 would be that as purchaser of the site, they would
23 be assuming responsibility for all of the
24 contamination present at that site, whether or not
25 they have a site agreement with the previous owner

1 that transfers that liability back to the previous
2 owner.

3 HEARING OFFICER VALKOSKY: Okay, that's
4 fair.

5 Cross-examination, Mr. -- Oh --

6 COMMISSIONER PERNELL: I have a couple
7 of questions.

8 Ms. Bach, you are aware of some
9 contamination in and around the proposed site?

10 THE WITNESS: Yes.

11 COMMISSIONER PERNELL: And how long have
12 you been aware of that?

13 THE WITNESS: Several years.

14 COMMISSIONER PERNELL: And has the court
15 done anything to have the previous owner clean the
16 site up, or --

17 THE WITNESS: We have been monitoring
18 PG&E's progress toward that end during the time
19 that we've been aware of the contamination.

20 COMMISSIONER PERNELL: So they have
21 started some cleanup at the site?

22 THE WITNESS: At the time that I first
23 became aware of it, some preliminary site
24 investigations had already been completed, and
25 additional investigation was underway.

1 COMMISSIONER PERNELL: Okay.

2 Investigations, but was there any cleanup at all
3 or remediation?

4 THE WITNESS: No, not that I'm aware of.

5 COMMISSIONER PERNELL: And is it your
6 understanding that that is because the new owner
7 would then take responsibility of the cleanup?

8 THE WITNESS: Right.

9 COMMISSIONER PERNELL: All right.

10 HEARING OFFICER VALKOSKY: Cross-
11 examination, Mr. Carroll?

12 MR. CARROLL: Yes, thank you.

13 MS. MINOR: Can I just clarify? I mean,
14 I think it's apparent from Ms. Bach's resume that
15 she's not an attorney, she is a biologist, and so
16 she is not giving you a legal answer, Commissioner
17 Pernell, to that question.

18 COMMISSIONER PERNELL: Okay. All right.

19 It is your opinion -- I thought I said
20 that, but --

21 MS. MINOR: Yeah.

22 COMMISSIONER PERNELL: I'm not trying to
23 tie you down for a legal opinion, but you made the
24 statement that it is the process of the Port of
25 San Francisco to have -- to be held harmless for

1 any type of contamination, and what I was doing
2 was trying to ascertain whether or not there was
3 contamination and whether you knew of any
4 contamination, and what was done about it by the
5 Port, from the Port's perspective.

6 But I realize -- Point well taken --
7 that you're not an attorney, so that was just in
8 your opinion.

9 THE WITNESS: Right, and just to
10 clarify, at that time that we became aware of the
11 contamination and aware that these investigations
12 were underway, PG&E was still the owner of the
13 property at that time, and so it would be our
14 practice to hold the site owner, which was PG&E at
15 the time, responsible for the remediation.

16 COMMISSIONER PERNELL: And they studied
17 it long enough to ascertain a buyer.

18 (Laughter.)

19 COMMISSIONER PERNELL: Scratch that.

20 Thank you.

21 MR. CARROLL: Thank you.

22 CROSS-EXAMINATION

23 BY MR. CARROLL:

24 Q Are you familiar with the site
25 mitigation and implementation plan that's been

1 discussed during the testimony today?

2 A I am.

3 Q So you didn't take that document into
4 consideration in preparing your prepared
5 testimony?

6 A No.

7 Q Are you familiar with the responses that
8 Mirant provided to the City in the form of
9 responses to data requests, responding to comments
10 that the City had made on a previous draft of the
11 site mitigation and implementation plan?

12 A Not intimately familiar, no.

13 Q Okay. And for the record, since you're
14 not familiar with them, you're not going to
15 recognize this, but for the record, that was data
16 request set number two, numbers 1 through 11, City
17 and County of San Francisco data requests.

18 So I take it since you're not familiar
19 with them, you didn't take those into
20 consideration in preparing your testimony today,
21 okay.

22 As I understand your testimony -- I know
23 you've raised a couple of points, but correct me
24 if I'm wrong. Is your primary concern that the
25 development of Unit Seven not interfere with

1 ongoing remediation of the entirety of the site?

2 A Our primary concern is twofold, and that
3 is that the development neither exacerbate the
4 existing contamination nor impede future
5 remediation.

6 Q Okay. Would your concerns be addressed
7 if there was a commitment between PG&E and Mirant
8 to coordinate the development of Unit Seven and
9 the overall mitigation of the site? And by that I
10 mean let's assume it's a written commitment.

11 A That would be a prudent step to take.

12 Q Do you think that would -- Would that
13 address the department's concerns or the City's
14 concerns in this respect?

15 A Depending on the specifics of the
16 agreement.

17 Q Okay. Are you familiar with a document
18 entitled, and it's sort of a long title so bear
19 with me, Conceptual Design, Intake and Discharge
20 Structures, Dredging Plan and Engineered Cap,
21 Potrero Power Plant Unit Seven Project, dated
22 July 26th, 2001? It was prepared by Mirant and
23 submitted to the Regional Water Quality Control
24 Board.

25 A Not in detail, no.

1 Q Do you know --

2 A I know of it.

3 Q But you know of it? Okay.

4 Have you -- Did you rely on any
5 information in that document in preparing your
6 testimony today?

7 A Not specifically, no.

8 Q In any way, generally?

9 A No.

10 Q How actively is the Port participating,
11 I think you said monitoring the discussions
12 between PG&E and the Regional Water Quality
13 Control Board in terms of remediation of the site?

14 A We're not directly participating in
15 those discussions between PG&E and the Regional
16 Water Quality Control Board, no. We have access
17 to correspondence and documents that were produced
18 by both entities, but we're not party to the
19 negotiations.

20 Q Okay.

21 MR. CARROLL: I have no further
22 questions. Thank you.

23 HEARING OFFICER VALKOSKY:

24 Mr. Westerfield?

25 MR. WESTERFIELD: Thank you.

CROSS-EXAMINATION

BY MR. WESTERFIELD:

Q Ms. Bach, I have to say I'm having a little trouble seeing on B1 where this fence line is.

A Yes. The photograph did not reproduce well.

MS. MINOR: We apologize; inadvertently, the original got filed, so it was one of the 50.

BY MR. WESTERFIELD:

Q I wonder if there's just any way to do a better job. I can imagine where it is, based upon your schematic B2, but --

A You could sort of see the fence line.

THE WITNESS: Am I allowed to go over and point things out?

HEARING OFFICER VALKOSKY: Yes.

THE WITNESS: Follow your finger, maybe like that. Moving right to left, you can see the fence located just north of -- Looking at the map, it appears like it's divided into thirds. So looking -- which is because three different maps were taped together to produce this exhibit -- just north of the first break between these pieces of map is a structure that extends out into the

1 bay, and immediately southwest of there you can
2 see the beginning of the fence which approximates
3 the Port's boundary.

4 It runs straight and parallel to the
5 shoreline, south from there, behind the outfall to
6 the irregularly shaped peninsula, just south of
7 the PG&E plant, which is Warm Water Cove, which is
8 Port property. So the Port owns that sort of --

9 BY MR. WESTERFIELD:

10 Q The end of the peninsula?

11 A The peninsula, and the lands east of
12 that fence.

13 Q And does the fence start I guess
14 somewhere directly -- Well, I guess it would be
15 east of the line made by the big tanks?

16 A Right.

17 Q Okay. That's where it starts.

18 A Actually, I believe it's just south of
19 there.

20 Q Just south of there.

21 A Right. See, this is the edge of it
22 right there.

23 Q Okay, I see. And when the -- I think,
24 is this -- I'm pointing to it, guessing that's
25 what it is --

1 A Mm-hmm.

2 Q -- and then when it hits the little
3 round end of the peninsula, does it follow the
4 curve of the peninsula around, or does it cut off
5 the end of the peninsula?

6 A The fence actually turns westward, but
7 the Port's ownership cuts directly across.

8 Q Oh, I see, directly across. And then --

9 A Actually, no, that's not right. The
10 Port's ownership includes that peninsula and lands
11 westward of that, I believe.

12 Q That peninsula --

13 A Let's double-check that against the --
14 Okay, yeah. The Port's jurisdictional line
15 actually cuts westward, then across the
16 peninsula --

17 Q I see.

18 A -- and westward again up the waterfront.

19 Q Now, in the little inlet which I guess
20 is Warm --

21 A Warm Water Cove.

22 Q -- Warm Water Cove, there seems to be a
23 bright white line that's going directly west. Is
24 that intended to a fence line or a line of
25 jurisdiction?

1 A I don't think so, no. I think that's
2 just some building structure that appears that way
3 in the aerial photograph.

4 Q All right, but it's near there somehow.

5 A It's basically along the waterfront.

6 Q I see, okay. And then I can follow this
7 schematic and it goes inland in Warm Water Cove to
8 a point somewhere west --

9 A Up to Illinois Street, which is up here.

10 Q Oh, all the way west to Illinois Street.

11 A Mm-hmm.

12 Q And then cuts across Illinois. But
13 there is another little inland section before it
14 goes so far west, right?

15 A Right. That is right here.

16 Q Oh, that's the one, okay. Now I
17 understand. I have a better idea.

18 A It's confusing.

19 COMMISSIONER PERNELL: Ms. Bach?

20 THE WITNESS: Yes, sir?

21 COMMISSIONER PERNELL: Could you join us
22 up here for a minute.

23 THE WITNESS: Yes.

24 MS. MINOR: We apologize for the poor
25 quality.

1 COMMISSIONER PERNELL: We think we got
2 it, but we just want to be sure.

3 HEARING OFFICER VALKOSKY: Let's just go
4 off the record while we get this straightened out
5 here.

6 (Brief recess.)

7 MR. WESTERFIELD: Okay. Now that we
8 have that clarified.

9 BY MR. WESTERFIELD:

10 Q Ms. Bach, when you talk about a
11 jurisdiction line, I'm a little confused about the
12 idea of jurisdiction versus ownership. The fence
13 line that you were talking about before, is that a
14 line demarcating ownership by the Port?

15 A I've been using the terms "ownership"
16 and "jurisdiction" interchangeably, as if they
17 were synonymous.

18 Q Okay.

19 A And in this particular part of the Port,
20 they are. There are other places on our property
21 where there is a divergence and the difference
22 between them is a point of legal definition that I
23 couldn't explain.

24 Q Okay, but as far as the boundary in this
25 map, for example, in B1, when you mean

1 jurisdiction and ownership, it's the same thing as
2 far as you know.

3 A Yes.

4 Q Now, I'm assuming, and I'll state the
5 obvious, that the Port owns everything south --
6 oh, I shouldn't say that -- everything east of the
7 jurisdictional line.

8 A That's correct. And that actually
9 brings up a good point that Jackie pointed out.
10 We need to clarify in my testimony that the fence
11 line that I was referring to that's parallel to
12 the shoreline is running north-south. I believe
13 in the record it's indicated to be east-west, but
14 it's actually north-south.

15 So the offshore lands are to the east.

16 Q Sure.

17 A And, indeed, owned by the Port.

18 Q Okay. And am I to assume that the Port
19 owns essentially all this bottom land way out into
20 the bay off the map out in the bay?

21 A Yes. Our ownership extends past
22 Treasure Island and actually to the shore of
23 Alameda in some areas.

24 Q Okay, quite a long ways.

25 A Mm-hmm.

1 Q And, now, this might be a legal
2 question, but you might know it anyway. When we
3 talk about the Burton Act, and I know this is a
4 statute from 1968, how long has the state or the
5 Port owned this property that we've been talking
6 about?

7 A I couldn't answer that.

8 Q I mean, has it owned it since, say, 1995
9 as far as you know?

10 A Oh, at least. I mean, the Port as a
11 state entity owned it before the Burton Act
12 transferred that ownership to the City.

13 Q I see. Now, would you -- Let me ask you
14 this. Now, you've mentioned that the Port has
15 access to information from the process between the
16 Water Board and PG&E. Does the Port also have
17 access to information that might be called out by
18 the SMIP?

19 A Specifically, I'm not sure what you're
20 referring to.

21 Q Well, I believe the SMIP requires that a
22 certain amount of information be generated in the
23 investigation and characterization of waste on the
24 Mirant property, and I wondered if the Port had
25 access to any of that information.

1 A If that information was provided to the
2 Department of Public Health as part of the Maher
3 compliance process, we could get access to it.

4 Q Okay. That's not a problem, as far as
5 you know?

6 A No, it's public record.

7 Q Okay. Have you asked the Department of
8 Public Health to insert any request for
9 information into the SMIP?

10 A I don't believe so.

11 Q Is that something that the Port plans to
12 do?

13 A I'd have to look into it.

14 Q Would that be an option for the Port, to
15 call up the department and say, hey, we'd like the
16 following information and could you put this in
17 the SMIP?

18 A Maybe.

19 Q What would hold you back from being able
20 to do that?

21 A It sort of depends on where the process
22 is in its progress, what documents have been
23 approved to date, and also what the request was,
24 whether it was reasonable and within the
25 Department of Public Health's jurisdiction to ask.

1 Q Sure. Okay. Now, do you know when PG&E
2 sold the Mirant property to Mirant?

3 A I don't know the date.

4 Q Do you know approximately when?

5 A '99?

6 Q And do you have any familiarity at all
7 with the scope of that agreement, like whether
8 there were any indemnity clauses or any indemnity
9 requirements in that agreement?

10 A I'm not familiar with the exact terms of
11 the agreement. Between Mirant and PG&E?

12 Q PG&E, right.

13 A No.

14 Q Not the exact terms, but any knowledge
15 about any of the terms.

16 A Not to the extent that I would want to
17 testify about it.

18 Q Okay. Do you know if the Port
19 participated in any way in the negotiations for
20 that agreement?

21 A I don't believe so. Not that I'm aware
22 of.

23 Q Now, finally, you have stated -- you
24 have in part of your testimony this waste nine,
25 proposed waste nine condition of certification,

1 which calls for Mirant to indemnify and hold the
2 City and the Port harmless from all liability.

3 I understand the concern that the City
4 has, it would like to be held harmless and not
5 have to pay anything for the remediation of this
6 land. I guess any landowner would have that
7 interest. But why is it that the Port feels it is
8 just and proper for Mirant to indemnify the Port
9 for actions of PG&E?

10 A Again, I'm not stating a legal opinion,
11 but the Port would hold Mirant as the current
12 property owner and the project proponent proposing
13 to do construction with potential to impact the
14 contamination responsible, both for that proposed
15 construction and the ownership of the property
16 itself, and the contamination on the property.

17 Q Okay. So are you telling me that this
18 is just a standard requirement that it puts in all
19 its leases, and you're asking that it be included
20 in an Energy Commission condition of certification
21 because it's just a standard provision you put in
22 all your leases?

23 A It's a standard provision that we put in
24 all of our leases, yes.

25 Q But is that the reason you're asking the

1 Energy Commission to include it as a condition of
2 certification?

3 A We're asking the Energy Commission to
4 include it as a condition of certification because
5 we feel it's important that responsibility is
6 assigned for both the onshore and offshore
7 contamination that is present at the site and on
8 Port-owned property.

9 Q But my question is why does the Port
10 think it should be Mirant's responsibility?

11 A Because Mirant is the property owner and
12 the project proponent at this point in time.

13 Q And is that the only reason the Port
14 believes that Mirant should indemnify the City for
15 all liability in remediation costs?

16 A We also believe that the City and Port
17 should be indemnified for any actions that Mirant
18 takes of the property during the course of
19 construction or operation that has the potential
20 to either exacerbate the contamination or in any
21 way impede the investigation and remediation of
22 the existing contamination.

23 Q Fine, and it sounds like that's
24 something that's pretty standard in your leases,
25 and I can understand if a property owner does

1 something to exacerbate the situation you would
2 sort of feel it's just to hold him liable for
3 that.

4 What happens if Mirant had nothing to do
5 with the contamination to begin with? Why does
6 the City feel it's just that Mirant should
7 indemnify the City for that expense?

8 A As I said, because they are now the
9 property owner and the project proponent proposing
10 to do work on the site.

11 Q Okay. No other reason?

12 A No, not other than those that I have
13 previously stated.

14 Q Okay. Now, does Mirant currently have a
15 lease with the City for its either intake or
16 outfall for the power plant?

17 A Does Mirant have a lease with the City?

18 Q Yes.

19 A I don't believe so, but I'm not sure.

20 Q Okay. Does PG&E have a lease?

21 A I believe that PG&E has some entitlement
22 to the property other than a lease, a license or a
23 permit to enter an easement. But again, I'm not
24 the right person to be answering that question.

25 Q I see. Does Mirant have any sort of

1 entitlement as far as you know to --

2 A I don't know.

3 Q Okay.

4 A Our real estate and property management
5 department would be the best place to get an
6 answer to that question.

7 Q Okay.

8 MR. CARROLL: That's all I have, thank
9 you.

10 HEARING OFFICER VALKOSKY: Mr. Rostov?

11 MR. ROSTOV: No questions.

12 HEARING OFFICER VALKOSKY: Mr. Ramo?

13 MR. RAMO: No questions.

14 HEARING OFFICER VALKOSKY: Redirect?

15 COMMISSIONER PERNELL: Ms. Minor has
16 indicated that she would get a more visible map of
17 the boundaries --

18 MS. MINOR: We should be able to get it
19 to you in a week.

20 THE WITNESS: A week.

21 MS. MINOR: Yes, we'll get it to you
22 within a week.

23 HEARING OFFICER VALKOSKY: Great. Thank
24 you for that clarification.

25 THE WITNESS: I do apologize for the

1 condition of the photograph.

2 COMMISSIONER PERNELL: That's quite all
3 right.

4 HEARING OFFICER VALKOSKY: Is there
5 anything else for Ms. Bach?

6 MS. MINOR: No.

7 HEARING OFFICER VALKOSKY: Okay. With
8 that, the committee thanks and excuses the
9 witness.

10 MS. MINOR: Thank you.

11 COMMISSIONER PERNELL: Thank you,
12 Ms. Bach.

13 (The witness was excused.)

14 MS. MINOR: Shall we wait and admit the
15 exhibits at the same time?

16 HEARING OFFICER VALKOSKY: Yes.

17 MS. MINOR: Our second and final witness
18 for today is John Fetzer.

19 DIRECT EXAMINATION

20 BY MS. MINOR:

21 Q John, would you state your name for the
22 record, as well as your professional
23 qualifications and educational background.

24 A My name is John Fetzer. I am the
25 founder and principal person in FETZPAHS

1 Consulting, a company that I recently formed with
2 a focus on doing consulting in the area of
3 polycyclic aromatic compounds, particularly the
4 polycyclic aromatic hydrocarbons, or the PAHs that
5 people have been referring to.

6 Prior to forming the company I was a
7 research chemist with Chevron, doing work on PAHs
8 and aspects of analytical chemistry for over 20
9 years. I have served as president of the
10 International Society on Polycyclic Aromatic
11 Compounds. I'm a member of the American Chemical
12 Society and the Society for Applied Spectroscopy.
13 I am serving or have served on the advisory boards
14 for the Fresenius Journal of Analytical Chemistry,
15 for the Journal of Analytical Chemistry A Page
16 advisory board, and am the topical editor for
17 Analytical Chemistry articles for the Journal of
18 Polycyclic Aromatic Compounds. I am also or have
19 served on ASTM committee, E13 on molecular
20 spectroscopy and chromaphotography. It recently
21 merged with another ASTM committee.

22 I have a bachelors degree in chemistry
23 from the University of Arkansas, a doctorate in
24 analytical chemistry from the University of
25 Georgia. I have published well over 100 refereed

1 research articles, review articles on the various
2 aspects of polycyclic aromatic compounds. And
3 I've also had a book published recently on the
4 chemistry and analysis of polycyclic aromatic
5 compounds.

6 Q Thank you, Dr. Fetzer. You have
7 indicated to me that there is one correction in
8 your testimony that we should make for the record,
9 and it is figure one that is attached on page
10 seven of your testimony. I understand that under
11 benzoapyrene it says, "six-ring PAH" and that
12 should be "five-ring"; is that correct,
13 Dr. Fetzer?

14 A That is correct.

15 Q All right. Is that the only correction
16 that you have to your testimony?

17 A That is the only one that I am aware of.

18 Q Okay. And so let's confirm for the
19 record that you are the same Dr. John Fetzer who
20 filed written testimony in this matter on
21 July 10th, 2002, and subject to the correction
22 that we have just made, your written testimony is
23 still the testimony that you intend to give today?

24 A I am and it is.

25 Q Great, thank you. And, Dr. Fetzer,

1 don't feel like you need to read your testimony.

2 I think you could just kind of summarize it for us
3 as we go, including walking us through the map.

4 Why don't we start off by if you would
5 tell us, kind of in lay language, what PAH is.

6 A PAHs are a class of organic compounds,
7 hydrocarbon compounds that are highly aromatic
8 multi-ringed compounds. The rings are carbon,
9 arranged in either five- or six-membered rings.
10 And they occur in quite a lot of -- due to a lot
11 of different factors.

12 Naturally they can occur from petroleum
13 seeps and other crude oil sources, from forest
14 fires, and other natural sources. The number of
15 natural sources is quite specific and very
16 limited.

17 Manmade sources generally are due to
18 combustion sources, and things such as the coal-
19 tar-like materials that are produced at
20 manufactured gas plants. The polycyclic aromatic
21 compounds in themselves are of interest to the
22 public and from their environmental concerns,
23 because some of the polycyclics, because of their
24 structure, are known to be extremely highly
25 carcinogenic.

1 Actually, benzoapyrene that's shown in
2 the first part of Exhibit A was the very first
3 chemical that was ever shown to cause cancer in
4 humans. It was observed over a hundred years ago
5 that chimney sweeps in London had a very high
6 incidence of a particular kind of skin cancer.
7 And then a similar observation was made for people
8 who were working with coal-tar pitches, and so
9 when those two materials were extracted and the
10 various components were applied to mice as tests,
11 they found that the one that turned out to be
12 benzoapyrene caused skin tumors, and so it was the
13 first chemical carcinogen ever found.

14 Q If we turn to figure one in your
15 testimony, would you clarify what the significance
16 of the chemical structure is of the PAHs that are
17 depicted on figure one.

18 A These three, benzoapyrene, naphthalene,
19 and phenanthrene are three of the 16 PAHs that are
20 commonly known as the EPA Priority Pollutant 16
21 PAHs. These are ones that are mandated by the US
22 Environmental Protection Agency for monitoring for
23 quite a few different materials, soils, air
24 particulates, and so on.

25 However, the list was developed several

1 decades ago, and does not include all of the
2 polycyclic aromatic compounds that are known to be
3 highly carcinogenic. The reason the figure is
4 shown is to give you an idea that they'd vary in
5 structure, that you have both numbers of rings --
6 for example, benzoapyrene has five and naphthalene
7 only has two, phenanthrene has three -- but also,
8 if you look at the structures that are in there,
9 they vary in the arrangement of those rings, and
10 you can conceptually imagine that the various ways
11 that you can take the hexagons that are in
12 benzoapyrene and move them around and still have
13 them hooked together can vary.

14 In reality, that's the true chemical
15 nature that actually, for the range of chemical
16 structures that you have for that small list of
17 EPA 16 compounds, there are well over 200 possible
18 polycyclic aromatic hydrocarbons, each of which
19 has a varying degree of occurrence, depending on
20 the source, and also has a varying degree of
21 biological impact.

22 And so you can't really assess the
23 sources of where PAHs come from or what a true
24 idea of the biological impact may be by only
25 looking at the occurrence of those 16.

1 Q Thank you. Your testimony outlines two
2 areas of concern that you have with respect to the
3 onshore and offshore PAH contamination at or near
4 the Potrero site, and you use Exhibit B that's
5 appended to your testimony to further clarify the
6 location of the contamination and to further raise
7 these concerns.

8 So would you step us through your
9 concerns, and also Exhibit B.

10 A Well, as is outlined in my written
11 testimony or was previously mentioned by Ms. Bach,
12 the two concerns are basically that to date, there
13 hasn't been a real wide-ranging examination of the
14 occurrence of the PAHs and also the related total
15 petroleum hydrocarbons and other nonaqueous-phase
16 liquid material onshore or offshore, which doesn't
17 give you a good idea of issues like varying
18 sources or migration.

19 And that's been touched on in the
20 testimony so far that you can speculate and say,
21 yes, there might have been ships that had problems
22 or there's contamination from rainwater scrubbing
23 there and bringing down the PAHs that may be due
24 to combustion from motor vehicles and all kinds of
25 other things. But until you really get a good

1 handle on that, it's all speculative, and so we
2 really don't have a good idea of the extent or the
3 magnitude of the problem.

4 And the Port of San Francisco and the
5 City and County of San Francisco are concerned
6 because not defining the issue and then making
7 decisions may limit what future actions there are.

8 Secondly, in the extent of offshore
9 contamination, the one location, general location
10 that was found was in the northeast corner of the
11 parcel, and the only response was to relocate the
12 inlet and outlet for the plant water cooling
13 system. And without a more comprehensive study,
14 we feel that may create future issues if certain
15 scenarios are possible that haven't been defined.

16 For example, it's been touched on that
17 possibly the -- you can tie levels of
18 contamination that are in Exhibit B that was also
19 discussed because it's from the URS report as
20 figures 30 and 39, that these very high levels of
21 benzoapyrene contamination and other PAH
22 contamination may be due to the scouring of the
23 water coming out of the plant and just moving
24 sediment away. That's one possible scenario.

25 Other ones arise, if you look at the

1 various consultant reports that have been done by
2 both for PG&E, which was Fluor Daniel and
3 Geomatrix, and then for the URS report that was
4 done for Mirant, one possible scenario, if you
5 look at the Geomatrix model that was proposed in
6 the report they did for PG&E was that there is an
7 impermeable barrier on the edge of the property
8 line as you get to the shore impeding any of the
9 hydrocarbon material from going to the shoreline
10 and into the bay.

11 However, when the concerns of the City
12 and County of San Francisco are looked at, we know
13 that either that model has not been proven, and
14 even if you do have that, then some things such as
15 construction for the inlet and outflow from the
16 plant that exists, Plant Three, may have
17 penetrated that barrier. And that may be the
18 reason that you see these, that barrier that's
19 impeding hydrocarbon flow may have been
20 penetrated, the geology was changed, and,
21 therefore, you have this high level of PAHs in the
22 bay.

23 And the concern for the City and County
24 of San Francisco from that aspect is if you do it
25 again with Plant Seven, how do you know without

1 adequate testing and monitoring that that doesn't
2 occur again?

3 Q Okay. Tell us more specifically what
4 Exhibit B depicts.

5 A Exhibit B is the surface sediment levels
6 highlighted in color to give ranges of PAH
7 concentrations that are found as surface sediments
8 near the outflow areas for the current power plant
9 that's there. The levels that are given in here,
10 there may be some ambiguity conceptually in the
11 units that are given. These units here are in
12 terms of parts per billion or micrograms per
13 kilogram.

14 Translating those into what most
15 scientists and toxicologists in particular may
16 deal with, the thousands here correspond to parts
17 per million. So that in the highlighted areas,
18 you're talking about near 100 parts per million
19 benzoapyrene. The cutoff that the Environmental
20 Protection Agency uses for quite a few occurrences
21 of benzoapyrene, and the FDA also uses it for
22 materials that contain benzoapyrene that are going
23 to come into human contact is one part per
24 million.

25 So right off, these sediments have a

1 hundred times that amount. If you look at some of
2 the concentrations that are onshore, you have
3 thousands of times that amount that the FDA and
4 the EPA and other federal agencies consider to be
5 a human health risk.

6 Q Dr. Fetzer, at this point, is there
7 anything further that you want to clarify about
8 your testimony or the nature of the concerns that
9 you have on behalf of the City and County of San
10 Francisco?

11 A No, I do not.

12 Q Okay.

13 MS. MINOR: We have no further questions
14 of Dr. Fetzer at this time.

15 HEARING OFFICER VALKOSKY: Dr. Fetzer,
16 what specifically would you recommend that the
17 Energy Commission do?

18 THE WITNESS: Since at this time it's
19 undefined what the various possibilities and
20 sources are, some of which may be active,
21 particularly if there is runoff from onshore
22 through -- carrying groundwater and so on, we need
23 to define if that's an issue or not, what the real
24 sources of the high levels of PAHs are.

25 Because at this point, by having them

1 undefined, you may pursue some actions that limit
2 future mitigations. And I think one of the
3 concerns that the City and County of San Francisco
4 has is that although it may sound good that some
5 of these things have been said to be going on
6 concurrently, that if you really haven't done some
7 of the front-end analytical work on sampling
8 appropriately and doing the right kinds of
9 analytical chemistry and then the right kinds of
10 assessments, you may preclude future actions.

11 And so the City and County of San
12 Francisco want to make sure that the sequence of
13 steps is appropriate to make sure that that
14 doesn't happen.

15 HEARING OFFICER VALKOSKY: And the first
16 in that sequence of steps would be, I take it, an
17 additional study; is that correct?

18 THE WITNESS: Well, an additional study
19 in terms of looking at some of the types of
20 materials that have already been found that we
21 know are there, and assessing what their sources
22 may be. So it's doing better, more fine-tuned
23 analytical chemistry on those.

24 Also, in the case of some of these
25 issues, it's still undefined what some of the

1 impacts may be of the new location of the Unit
2 Seven discharge. We haven't yet, in my listening
3 to the testimony, had a definitive statement
4 saying that the scouring will not occur because of
5 the steps that are being proposed.

6 And we know that if we accept the fact
7 that the scouring caused what was in Exhibit B,
8 then it has a major chance of -- or it has a
9 significant chance of being an environmental
10 problem, just because you're dealing with such
11 high levels of the PAHs. A hundred parts per
12 million of benzoapyrene, to most environmental
13 chemists, would be a huge red flag waving. It's
14 just a very high level of benzoapyrene,
15 benzoapyrene being a very carcinogenic chemical.

16 HEARING OFFICER VALKOSKY: Okay. So I
17 take it the City takes no comfort in the fact that
18 the Commission staff and DTSE have examined at
19 least some of the matters that they're concerned
20 about.

21 MS. MINOR: Do you know the answer to
22 that?

23 THE WITNESS: I can't speak for the City
24 as a wide-ranging governmental body. I know that
25 as a concern, the Port of San Francisco wants to

1 ensure that the problem is well-defined enough so
2 that the right decisions and the right timing and
3 the right sequence can be done. And from the
4 current state of the analytical data that's at
5 hand, that is not true. There just is not enough
6 good analytical data to assess the various
7 possibilities.

8 HEARING OFFICER VALKOSKY: Okay, thank
9 you.

10 COMMISSIONER PERNELL: Mr. Fetzer, and
11 you may have said this, but do you work for the
12 Port of San Francisco?

13 THE WITNESS: No, I do not.

14 COMMISSIONER PERNELL: You are a
15 consultant?

16 THE WITNESS: I am a consultant.

17 COMMISSIONER PERNELL: Okay. In your
18 opinion, you know, you keep saying that you need
19 more data and more studies need to be done on the
20 effects and what happens if you add to the, you
21 know, some of the pollutants that are already
22 there. In your opinion -- Well, scratch that.

23 Do you know of any studies that the Port
24 has already undertaken that would answer some of
25 the questions that you are asking us?

1 THE WITNESS: I know of no studies. The
2 only studies I think in this site that have been
3 undertaken that I'm aware of are the Fluor Daniel,
4 the Geomatrix, and the URS reports.

5 COMMISSIONER PERNELL: And have you
6 reviewed those?

7 THE WITNESS: Yes, I have.

8 COMMISSIONER PERNELL: And can you --
9 From that information, can you come to a
10 conclusion on the best approach to take as it
11 relates to this project, other than additional
12 studies?

13 THE WITNESS: Other than additional
14 studies? That's a really wide-ranging question.
15 You mean as far as the -- from the standpoint of
16 what aspect of the next steps? I mean, I don't --

17 COMMISSIONER PERNELL: Well, yeah,
18 that's --

19 THE WITNESS: Well, since your question
20 said in the absence of further study, I think it's
21 one of those things, depending on what the results
22 of further study would be, that would define what
23 the next steps are.

24 If further studies showed that there was
25 a fair degree of runoff and that there was the

1 potential for it to get into the bay and into the
2 sediments off the bay, and the only things
3 impeding it were some of the barriers that have
4 been talked about, sea walls and so on, then that
5 would definitely change the thinking or would have
6 to change the thinking, because that would show
7 that those kinds of barriers are much more
8 important because there is a high probability that
9 if there is any penetration or damage to those,
10 then you'll have contamination of the bay.

11 If it's shown that that isn't the source
12 and cause for the high incidence of benzoapyrene
13 that's in Exhibit B and some of the other
14 locations that are on some of the URS maps, then
15 it would point to some other possibilities that
16 may be of interest. For example, in the
17 documentation in the various reports, and one of
18 the probable causes for some of the offshore deep
19 sediment PAHs is that fill from the site was used
20 and put into the bay sometime in the past.

21 The magnitude of that, as far as where
22 it was and how much was put in the offshore
23 waters, is unknown. And so it may be that where
24 the new intake and discharge areas were also had
25 that kind of fill in them. And so when you go

1 through the construction of those areas, the
2 Mirant testimony said that they would take care of
3 any of the material that came up in construction,
4 but without a monitoring program, that doesn't
5 show that maybe by putting the intake and
6 discharge in those areas, you have further of the
7 scouring and disruption and you may create more
8 hot spots in the future.

9 And if you don't have any way of
10 monitoring or any requirement of monitoring, then
11 there will be harm to the environment and it will
12 be unnoticed until there is a major problem.

13 COMMISSIONER PERNELL: Okay, and you
14 think a monitoring program would at least tell you
15 some of the dos and don'ts of what not to do in
16 terms of the project, or putting the pipe into the
17 bay?

18 THE WITNESS: Well --

19 COMMISSIONER PERNELL: I'm just trying
20 to get a sense of --

21 THE WITNESS: Yeah, and one of the
22 things in listening to the testimony that has
23 struck me is that the definition of the project as
24 defined by both the CEC staff and Mirant is the
25 actual physical boundaries of what they term the

1 construction area.

2 COMMISSIONER PERNELL: All right.

3 THE WITNESS: That does not define the
4 impact, potential impact area if you don't know
5 that there may be runoff potential, into the bay
6 or into the area that the Port of San Francisco
7 onshore property is.

8 COMMISSIONER PERNELL: Let me stop you
9 there. Runoff is the wastewater -- not
10 wastewater, but rainwater runoff --

11 THE WITNESS: Rainwater, also the
12 underground flow of water that occurs in any of
13 the properties due to, you know, rainwater
14 permeating the soil and migrating underneath the
15 surface. If those things are not assessed, then
16 you don't know whether there is a problem or not.

17 If it turns out that in the future we
18 realize there is a problem because it starts
19 showing up, some of these sheens, some of these
20 tar balls that are mentioned in the URS and
21 Geomatrix reports and the Fluor Daniel reports
22 start appearing, it may be that because of the
23 construction that's already gone on in the
24 operation of the plant, those will not be able to
25 be handled well.

1 COMMISSIONER PERNELL: I think I
2 understand that point. I'm just trying to get a
3 sense of your opinion as to how you would prevent
4 some of those activities from occurring.

5 THE WITNESS: Well, it's not in my
6 domain as an analytical chemist or a polycyclic
7 chemist to state that. That's more in the weight
8 of someone dealing with remediation issues and
9 those aspects to decide on those kinds of steps.

10 My testimony is to give the opinion that
11 from looking at the analytical data, both the
12 sampling and the types of analysis that have been
13 done, you cannot assess those kinds of things.
14 There are so many potential possibilities, some of
15 which will be precluded if you do start
16 construction of the Unit Seven, that it would be
17 prudent to go through a make that assessment up
18 front so that then you could define what the
19 various options are, how big the problem is, what
20 all the issues are, and deal with them on the
21 front end, rather than having to deal with them in
22 the middle of the project or, worse yet, after
23 it's done and something shows up.

24 COMMISSIONER PERNELL: All right. My
25 final question is in your opinion, how long would

1 that take?

2 THE WITNESS: Analytically? Sampling
3 and the analytical kinds of things, I would say if
4 a concerted effort were made at it, it would be in
5 the same time scales that appear to be what Fluor
6 Daniel and Geomatrix and URS did, which is in
7 terms of months rather than years.

8 Some of it is just looking at the maps
9 and the locations on here, and the work that was
10 done previously, and choosing areas that are more
11 wide-ranging. Because the previous studies were
12 very selective in where they looked at and where
13 they did not look at. And then also -- But the
14 main issue would be looking at it with better
15 analytical tools to get a better picture of what
16 the sources and the extent of this problem is,
17 this contamination.

18 COMMISSIONER PERNELL: All right. So
19 one to six or six to twelve, as an estimate?

20 THE WITNESS: Yeah, as an analytical
21 chemist, I would say it's doable in six months,
22 because there are labs out there that do this kind
23 of analysis, or that could be set up to do this
24 kind of analysis fairly readily.

25 The whole area of what's known as

1 petroleum forensic analytical chemistry where it's
2 commonly used when you have spill assessments.
3 Does this crude oil come from a tanker offshore or
4 does it come from petroleum seep? Those kinds of
5 analytical labs already exist and they do this
6 very complicated analytical testing.

7 Now, if one of those types of labs was
8 engaged, they could do this type of analytical
9 work.

10 COMMISSIONER PERNELL: All right, thank
11 you.

12 HEARING OFFICER VALKOSKY: Excuse me,
13 Dr. Fetzer, one of your chief concerns is the
14 possibility that instruction of Unit Seven would
15 preclude future, the implementation of future
16 measures to remediate or to mitigate any
17 contaminants; is that correct?

18 THE WITNESS: Yes. Not knowing what the
19 scope of remediation needs to be, let alone the
20 specific steps that need to be done,
21 hypothetically you may do something that makes
22 some of those steps much more difficult, much more
23 expensive to the point where they're not doable.

24 HEARING OFFICER VALKOSKY: Okay. Now,
25 when you say -- Does that, if you potentially,

1 hypothetically made one of those steps not doable,
2 does that necessarily mean that you could still
3 not, via some other method, address the problem
4 that you're worried about, the problem being the
5 contamination?

6 THE WITNESS: Then it may be even more
7 difficult and more expensive.

8 HEARING OFFICER VALKOSKY: Okay. But
9 that's a possibility.

10 THE WITNESS: Yeah.

11 HEARING OFFICER VALKOSKY: I mean, there
12 are a couple of ways of looking at it. One is
13 reducing the range of options, and the other is
14 precluding the possibility of remediating. And
15 I'm just trying to figure out where your concerns
16 lie.

17 THE WITNESS: The concerns, and in my
18 discussions with the personnel at the Port of San
19 Francisco, are reducing the options more than
20 precluding any remediation. The extent of the
21 problem, by being unknown, you want to make sure
22 that all gets done eventually that needs to be
23 done so that there is no threat from the
24 contamination.

25 And so it's basically looking at more an

1 optimization. You want to go for those that are
2 most likely to do that most effectively.

3 HEARING OFFICER VALKOSKY: You mentioned
4 the, in your opinion, the need for a monitoring
5 plan or program for the relocated discharge pipe;
6 is that correct?

7 THE WITNESS: Well, that's one idea that has
8 struck me. If we don't know the dynamics, where
9 the contamination is coming from, if it is
10 contemporary or is it historical, then we're
11 making a lot of assumptions. If it is
12 contemporary, are there things going on now where
13 there is contamination that's continuing from
14 onshore to offshore, then we need to know that and
15 in the future we need to monitor to see if any of
16 the operation, any construction operation may
17 change that.

18 HEARING OFFICER VALKOSKY: Could you
19 give me a little bit more specific idea about what
20 would be the constituents of such a monitoring
21 plan?

22 THE WITNESS: Well, the simplest one
23 would be something analogous to what has been done
24 by the previous consulting firms, Fluor Daniel and
25 Geomatrix and URS, with groundwater well sampling,

1 offshore monitoring either through cores or other
2 aspects in that standpoint.

3 But it appears that, you know, there is
4 nothing mentioned of anything like that as if
5 everything that was there, the contamination was
6 all historical and so by doing the prudent things
7 that are being espoused by Mirant, there will be
8 no future problem either. And we don't know
9 that's the case.

10 HEARING OFFICER VALKOSKY: Right, okay.
11 Other than the groundwater, ground well monitoring
12 and things, I'm looking for is there a menu of
13 monitoring measures that you could choose from to
14 make sure that there are no future impacts?

15 THE WITNESS: Well, I think that, you
16 know, some of those issues are probably better
17 discussed by environmental geologists or other
18 people that have more experience in looking at the
19 lay of the land and figuring out what some of the
20 impacts may be and what needs to be done.

21 But yeah, the groundwater monitoring is
22 one that has already been done on site in a few
23 places and seen some evidence that there was some
24 migration of hydrocarbon materials and PAHs. But
25 it was all done in a different context, rather

1 than an ongoing dynamic one of monitoring to see
2 if there was any ongoing problem.

3 HEARING OFFICER VALKOSKY: Okay. So
4 would you think that continuing -- that monitoring
5 continuing in the future would be a preferable
6 requirement, would be a good idea?

7 THE WITNESS: I think it would be very
8 prudent.

9 HEARING OFFICER VALKOSKY: Okay, thank
10 you.

11 ADVISOR SMITH: Just a couple of quick
12 questions, Dr. Fetzer. The analytical labs that
13 you mentioned that exist today, I think you used
14 an example of their capabilities of determining
15 origins of oil seep, whether it comes from a
16 tanker or some other source.

17 THE WITNESS: Right.

18 ADVISOR SMITH: You described the
19 existence of these analytical labs. Is the
20 technique so refined that they can determine in
21 this setting whether these chemicals are
22 originating from the outfall?

23 THE WITNESS: The distribution of PAHs
24 varies greatly depending on the source. For
25 example, it's been mentioned that, you know, that

1 some of the potential sources in the sediments may
2 be things like ships that spilled. Well, if they
3 spilled ballast, where it was marine, heavy marine
4 diesel oil or heavy cycle oil or bunker fuel oil,
5 those have distinctive PAH patterns.

6 The types of PAHs that occur in gasoline
7 engine emissions are different than those that
8 occur in diesel motor vehicles, and so the types
9 of PAHs, out of this -- you know, well over 200
10 PAHs that are in the range that analytically you
11 would look at for the range that the EPA 16
12 covers, the two-ring through six-ring.

13 There is enough variety of those and
14 enough variation in the occurrence of the
15 individual species that you can tell very readily
16 even very fine sources. In the literature there
17 are studies of sediments in harbors that showed
18 that there was diesel spillage in one area, as
19 opposed to bunker oil in another area. Those
20 kinds of things are easily ascertained by these
21 kinds of analyses, so something as distinct as the
22 DNAPL material that's on shore, or the buried
23 material offshore would have characteristic
24 fingerprint patterns that you could differentiate.

25 HEARING OFFICER VALKOSKY: Is it

1 possible that the PAHs are simply being moved
2 around, sucked into the intake and deposited
3 outside the discharge?

4 THE WITNESS: I'd say it's -- Not
5 knowing the internal mechanics and chemistry
6 that's going on in the aqueous, I would say that
7 it's theoretically possible, but with the
8 solubilities of some of these PAHs like
9 benzoapyrene, it's unlikely that you're going to
10 end up with a hot spot that localized that is at
11 that high level. A hundred parts per million is a
12 very high level of benzoapyrene. And benzoapyrene
13 isn't very soluble in water.

14 So if that were the case, it's possible
15 if you had a chronic, you know, always some
16 benzoapyrene coming in and falling out right on
17 that spot, and just because of the particular
18 hydrology and geology that goes on, it may all
19 precipitate in that one spot, it's theoretically
20 possible, but, you know, I don't know that I -- I
21 don't think I would say that that's highly likely.
22 I'd say it's pretty -- would be a pretty remote
23 possibility.

24 HEARING OFFICER VALKOSKY: Okay. So
25 it's a remote possibility that PAHs could be

1 sucked in the intake, circulated through Unit
2 Three's cooling system, and discharged into the
3 bay at another point and deposited over time in
4 some concentrations at that discharge.

5 THE WITNESS: It's remotely possible
6 that the hot spots would fall under that
7 mechanism. If that were the case, I think there
8 would be a lot of other issues for PG&E as past
9 owner and Mirant as the current owner of that
10 plant to deal with because it's more likely that
11 if there are those significant amounts of PAHs
12 being sucked into the intake and then coming out
13 to where they can leave hot spots that are a
14 hundred parts per million of benzoapyrene and
15 other high levels of the other polycyclics, then
16 they probably have some of that occurring within
17 the plant, within all that system.

18 So whenever, you know, a maintenance
19 worker has to deal with that water system, he's
20 being exposed to nasty levels.

21 MS. MINOR: But it's your testimony that
22 that's very remote?

23 THE WITNESS: That's not likely, you
24 know. But, you know, if that is, turns out
25 because the finer analytical data is done and it

1 shows that that is a viable option, then it does
2 open up some other things that need to be dealt
3 with. That's just an example of that that -- The
4 dynamics of PAH solubility and precipitation is
5 very finicky.

6 When you get to the solubility of these
7 PAHs, they fall out wherever they want, not
8 wherever you want them. And so, you know, you
9 could end up with a hot spot in the sediment, as
10 you're proposing, or you could end up with a hot
11 spot in the plant, which would be bad for the
12 operator. We don't know, and then, as I said,
13 those are both very remote hypotheticals in my
14 opinion.

15 HEARING OFFICER VALKOSKY: So PAHs, when
16 they are discharged into water, either via runoff
17 or whatever mechanism, they're not very soluble;
18 is that correct? Is that what you were saying?

19 THE WITNESS: They vary in solubility as
20 you generally get to the large one, so a five-ring
21 one like benzoapyrene has much less solubility
22 than a two-ring one like naphthalene.

23 HEARING OFFICER VALKOSKY: Okay, and
24 would you expect, then, once entering the water,
25 the bay, would it settle out pretty much in that

1 very local area, settle onto the sediments, and
2 then remain there until they're scoured or moved
3 by currents? Or would they be affected by
4 currents, would they just basically stay there?

5 THE WITNESS: Well, it depends on a lot
6 of dynamics, because the PAH solubilities,
7 although they're very low, they can vary and they
8 vary quite a bit with temperature, with other
9 components in the water, with salinity, with the
10 amount of carbon dioxide that's dissolved in the
11 water. All those are variables that occur with
12 changes in the weather.

13 HEARING OFFICER VALKOSKY: And you don't
14 know enough about the variables of this locale to
15 offer --

16 THE WITNESS: No, I have done some
17 studies of PAH solubilities and know that, you
18 know, those kinds of variables may change the
19 solubilities by a factor of 20, so that under
20 certain conditions you may only have one
21 solubility, and if you change the PAH or the
22 salinity, it may be 20 times higher or 20 times
23 lower.

24 And so you really can't say what kinds
25 of mechanisms may be going on, unless you do some

1 real fine detailed work.

2 HEARING OFFICER VALKOSKY: Okay, thank
3 you.

4 Mr. Carroll?

5 MR. CARROLL: Thank you.

6 Good afternoon, Dr. Fetzer.

7 THE WITNESS: Good afternoon.

8 CROSS-EXAMINATION

9 BY MR. CARROLL:

10 Q Dr. Fetzer, are you familiar with the
11 site mitigation and implementation plan that was
12 prepared by Mirant and submitted as Technical
13 Appendix D to the application for certification?

14 A That's the URS report?

15 Q Well, I'm not sure what you mean by the
16 URS report. This was Appendix D to the
17 application for certification.

18 A Yeah, I don't know -- I don't recognize
19 it by that name.

20 Q Okay. And I assume, then, that you also
21 are not familiar with responses to data requests
22 from the City that Mirant provided related to that
23 document.

24 A No, I am not.

25 Q And are you familiar with the

1 document --

2 MS. MINOR: Mike, just a minute, let --
3 Excuse me, let John catch up with you.

4 MR. CARROLL: I'm sorry.

5 MS. MINOR: This is Exhibit -- This is
6 the Exhibit D that he's referring to.

7 THE WITNESS: At quick glance, much of
8 this looks familiar because it appears to come
9 from the URS report that was prepared for Mirant.
10 BY MR. CARROLL:

11 Q So is your testimony then that you are
12 familiar with that document?

13 A I am very familiar with the URS report
14 that was prepared for Mirant, which appears to be
15 the source for the statements that are in this
16 report.

17 Q Are you familiar enough with that
18 document that you could explain to us in general
19 terms what its purpose and intent is?

20 MS. MINOR: Okay. Mr. Carroll, is the
21 specific question whether or not Dr. Fetzer has
22 actually seen, previously seen a copy of the site
23 mitigation and implementation plan?

24 MR. CARROLL: Well, let me try to be
25 clear.

1 BY MR. CARROLL:

2 Q I guess my bottom line question is did
3 you rely in any way on the site mitigation and
4 implementation plan in preparing your testimony
5 that you've presented in these proceedings?

6 A No, I did not.

7 Q Okay, thank you. And the same question
8 with respect to a document, and again, it's a
9 long-titled document that I asked Ms. Bach about,
10 and if you recall it, you can cut me off at any
11 time in the title and tell me you are or are not
12 familiar with it, but it's entitled Conceptual
13 Design Intake and Discharge Structures, Dredging
14 Plan, and Engineered Cap, Potrero Power Plant Unit
15 Seven Project. It's a document dated July 26th,
16 2001, and prepared by Mirant and submitted to the
17 Regional Water Quality Control Board.

18 A No, I am not, or no, I did not.

19 Q Okay. And Ms. Bach hadn't reviewed
20 either of those documents either, right?

21 How is it that you can reach a
22 conclusion, as you did on page four of your
23 prepared testimony, that no one has addressed
24 whether or not the proposed construction will
25 impede or otherwise affect remediation when, in

1 fact, you haven't reviewed the documents in which
2 applicant addresses those very things?

3 A It's my contention, in looking at the
4 data that has been gathered on the site, that the
5 scope of the analytical sampling, the physical
6 places that samples were taken to look for
7 contamination, and then the types of testing that
8 was done to examine that contamination in more
9 detail were not sufficient, so that any subsequent
10 assessment is based on very limited data.

11 And so if you're basing your assessment
12 on very limited data, you cannot have looked at
13 all of the possible contingencies.

14 Q I understand your testimony to be that
15 the overall site has not been adequately
16 characterized; is that a fair general summary of
17 your conclusions?

18 A Yes.

19 Q Okay. But how, based on that opinion,
20 without having reviewed any of the measures that
21 applicant proposes to implement, can you conclude
22 that what they're proposing is inadequate?

23 A Because the true occurrence and sources
24 of the contamination and whether or not, how they
25 occur in chronological or timely sequence hasn't

1 been defined. It's unknown whether or not this is
2 what might be termed ancient history, a 120-year-
3 ago problem, 50-year-ago problem, whether it's a
4 current problem, whether there are ongoing issues,
5 none of those sorts of things have been examined.

6 Because the analytical focus has been so
7 limited that if you have old contamination and
8 it's stationary is not defined. If you have old
9 contamination and it's mobile is not defined. If
10 you have the chance of any new sources of
11 contamination due to changes in the site due to
12 construction or whatever activities may be going
13 on are really undefined because the analytical
14 types of things that were looked at for the basis
15 were not done.

16 If you don't know what the dynamics of
17 the site are and what the sources of the
18 contamination are, then you can't really get a
19 good picture of how to deal with it.

20 Q Isn't it possible that the proposals
21 made by the applicant, which include proposals for
22 additional sampling, would yield the information
23 necessary to reach a conclusion that the proposed
24 construction would not impede or otherwise affect
25 future remediation?

1 A The key to your question is the word
2 "possible." But there are also other
3 possibilities, and that's the concern of the City
4 and County of San Francisco, the Port of San
5 Francisco, that those other possibilities may also
6 arise. It may be that the overwhelming opinion or
7 at least a strong opinion may say it's likely that
8 those things that have already been done are good
9 enough, but the City and County of San Francisco,
10 the Port of San Francisco do not want to be in the
11 situation where sometime in the future it's found
12 out that that isn't true because the plans were
13 based on limited data.

14 Q Okay. But you're not familiar with the
15 additional data that the applicant has proposed to
16 collect in documents that we have just been
17 talking about.

18 A No, I am not.

19 Q Okay. Are you familiar with the
20 proposed location for the new intake structure?

21 A I have looked at the various maps that
22 are in the reports and have seen where it is on
23 those maps.

24 Q Familiar enough that you would be able
25 to identify on your Exhibit B the approximate

1 location?

2 A I would say generically I know it is
3 more to the lower right on the map, but I couldn't
4 pinpoint it exactly.

5 Q Okay. How familiar are you with the
6 proposed design of the intake structure?

7 A I have only had I guess generic
8 descriptions of it.

9 Q Okay. So you wouldn't be able to
10 describe its size or even the most general sorts
11 of descriptors?

12 A No, that falls into civil engineering
13 and I'm -- that's out of my field of expertise.

14 Q I mean even a hundred feet by 20 feet by
15 30 feet?

16 A I probably have seen some or heard some
17 of the numbers in discussions or in some of the
18 reports, but I don't recollect what they are. It
19 really wasn't cogent to what I was looking for in
20 the material.

21 Q And what about the design of the
22 outfall? Your Exhibit B actually depicts an
23 outfall. As far as you know, is that an accurate
24 depiction of the proposed discharge?

25 A The Exhibit B is an illustration from

1 the URS report that was prepared for Mirant. It's
2 actually a slight modification, adding the colors
3 to the contours of figure 39 in that report, so
4 I'm assuming that it's an accurate reproduction,
5 that we're using it based on the presumption that
6 URS did an accurate representation in the report
7 to Mirant.

8 Q But you wouldn't know whether this has
9 been superseded by a subsequent design?

10 A No, I don't.

11 Q All right. So is it fair to say that
12 what we are talking about here and the concerns
13 that you've expressed on behalf of the Port are
14 truly hypothetical? You are not particularly
15 familiar with the structures that Mirant is
16 proposing to construct or their precise location,
17 or even sort of the grossest terms of their
18 design. You haven't reviewed any of the measures
19 that the applicant has proposed to implement
20 during construction of the project to ensure that
21 they don't impede the ability for future
22 remediation.

23 So your concerns aren't based on
24 anything real, with respect to the project as
25 proposed or the measures that Mirant plans to

1 implement, they are based on hypothetical
2 scenarios that might occur.

3 MS. MINOR: I'm going to object. I'm
4 not sure that there is a question there, but
5 certainly when Dr. Fetzer was very clear as to the
6 purpose of his testimony, and he can certainly
7 restate the purpose of his testimony if that would
8 help clarify things for Mr. Carroll, but I'm going
9 to object to what I think was a speech and not a
10 question.

11 HEARING OFFICER VALKOSKY: Okay. I'll
12 sustain the objection.

13 Mr. Carroll, why don't you rephrase it
14 into a couple of questions.

15 MR. CARROLL: I think I've probably
16 covered the subject in my previous questions.

17 HEARING OFFICER VALKOSKY: Okay.

18 MR. CARROLL: But I would like --

19 BY MR. CARROLL:

20 Q Taking Ms. Minor's lead, why don't you,
21 for my benefit, explain to me the purpose of the
22 analysis that was undertaken.

23 A The analysis was, fundamentally was to
24 look at the various studies that had been done on
25 site, and ascertain whether in my opinion the

1 scope and extent of the contamination onshore and
2 its potential impact to the properties of the Port
3 of San Francisco had been addressed.

4 So I looked at the pattern of sampling,
5 the types of sampling that had been done, the
6 samples that were excluded explicitly in the
7 various reports because there was a pattern there,
8 and any samples that showed a sheen, that showed
9 tar were excluded, not only by -- well, by all
10 three consultants, they used those kinds of
11 criteria.

12 And in my experience, many years of
13 working with petroleum and petroleum-rated
14 products, I've observed that a sheen on water or
15 tar is an indication that there is hydrocarbon
16 contamination. And since the levels of
17 contamination that are being talked about are
18 parts per million, things of that sort, then
19 excluding ones with visible and obvious sheens is
20 excluding numbers that are very high.

21 So to the best of my ability, in looking
22 at the analytical data, my conclusion is that the
23 scope and extent of the contamination, what the
24 dynamics are, what the causes of the contamination
25 are has not been assessed.

1 As far as hypothetical, no, I haven't
2 looked at the outfall for Unit Seven, but
3 hypothetically, it is not the case in Unit Three.
4 There is a hot spot, a very high level of
5 benzoapyrene, and all the testimony that's been
6 given so far there has been no indication that
7 that cannot recur.

8 Q Well, let me ask you a question about
9 that. If the outfall for Unit Seven was well
10 outside the area affected by the contamination,
11 would that change your concerns about recurrence?

12 A If it were outside the area of the
13 contamination, but the area of the contamination
14 hasn't been defined. So that's sort of a
15 Catch-22. I don't know what that means, in terms
16 of changes in the design or where that would be.

17 Q Well, let's look at your Exhibit B. If
18 we look at the scale, it looks like the outer
19 perimeter of the green-shaded area is probably
20 about 600 feet.

21 A Right. Well, these are the surface
22 contamination areas, and what you really need to
23 do in the case of some of the scenarios,
24 particularly the scoring one, is looking at core
25 samples as well. And the number of deep core

1 samples offshore was limited, and so the extent of
2 that deep contamination isn't known.

3 Q Okay. Well, let me tell you, and let me
4 ask you to accept as a fact that the outfall for
5 Unit Seven would be 900 feet offshore.

6 A Right.

7 Q And also assume that it would be
8 designed to prevent any scouring. Under those
9 circumstances, would your earlier recommendation
10 about having to monitor what's happening at the
11 outfall change?

12 A No, in that that takes care of the
13 scouring scenario, but it doesn't take care of the
14 situation in which -- that hasn't been, because of
15 the limited monitoring, the idea that there is a
16 permeated area on the shoreline because of the
17 excavation that went on for Unit Three.

18 That scenario is also possible, that if
19 you -- because there wasn't enough sampling done
20 to really show what the extent of the
21 contamination is and where it's coming from, there
22 is the possibility, and if you look at the
23 argument that Geomatrix used in theirs
24 particularly, that if you have an impermeable
25 barrier all along the shoreline of the site that

1 prevents the hydrocarbon material from going
2 offshore, well, any kind of construction is going
3 to cut through that layer and create a penetration
4 or permeable area that wasn't there before.

5 And if you say that that's a
6 hypothetical possibility, then you would end up
7 with the same kind of distribution here. You
8 would end up with a high level of PAH coming from
9 somewhere onshore. It may not be due to the
10 discharge itself, it may be due to the
11 construction of those materials making it so that
12 the material onshore can now get offshore.

13 And that's something that further study
14 needs to be done because there are so many
15 possibilities that are undefined.

16 MR. CARROLL: Thank you. I have no
17 further questions.

18 MR. WESTERFIELD: Dr. Fetzer, Bill
19 Westerfield, I'm with staff counsel. I just have
20 a few questions, I hope.

21 CROSS-EXAMINATION

22 BY MR. WESTERFIELD:

23 Q Are you familiar with the term "Bay
24 mud," as it applies to the area around the shore
25 of San Francisco Bay?

1 A I've seen it in some of the reports, but
2 I'm not a sediment chemist or a geologist of that
3 sort, so I'm not scientifically versed in what
4 that phrase might mean.

5 Q Have you investigated the possibility
6 that Bay mud may underlie the Potrero site,
7 underneath the asphalt?

8 A I haven't really looked at that. I know
9 in looking through the reports they have
10 descriptions of the underlying site geology. And
11 I think that some areas near the shore are fill,
12 and so they may be what would come under the
13 description of Bay mud.

14 Q Okay. Are you aware of the general
15 permeability or porosity of Bay mud as it applies
16 to the shoreline of San Francisco Bay?

17 A No, I'm not. I'm familiar from working
18 with other projects and other scientific tasks of
19 the permeability of various types of harbor
20 sediments.

21 Q Well, out of curiosity, what is that?

22 A It actually -- It can be very permeable,
23 because it's essentially a sludge of soil. It's
24 sediment kinds of materials and water. It's a
25 slurry in some instances, so it's quite permeable.

1 Q But you have no idea of the permeability
2 of Bay mud.

3 A No, I don't. And as far as, you know,
4 permeability in terms of transport of a particular
5 amount of a material over a particular time, I
6 don't have any actual scientific data or knowledge
7 of that.

8 Q Okay, and you don't know whether it lies
9 underneath the Potrero facility. So then you
10 don't know whether it might overlay any historical
11 PAH contamination underneath the site, do you?

12 A No, I don't.

13 Q Okay. And I think you testified that
14 some PAHs, particularly benzoapyrene, is insoluble
15 or fairly insoluble, correct?

16 A No, it has a low solubility.

17 Q Fair enough.

18 A Yeah.

19 Q And that is one of the more carcinogenic
20 of the PAHs, correct?

21 A Yes, it is.

22 Q Okay. What are some, just give me maybe
23 a couple of the other PAHs that you would
24 characterize as being of higher risk because of
25 their carcinogenicity?

1 MS. MINOR: Higher risk than --

2 MR. WESTERFIELD: Higher risk than other
3 PAHs.

4 THE WITNESS: Actually, even on the list
5 of 16, benzoapyrene isn't the most mutagenic.
6 Indenopyrene and benzanthracene are. If you go
7 off of the list, which is among the 200 other PAHs
8 that are in that same range of two to six rings,
9 cyclopenta-c-d-pyrene is many times more
10 carcinogenic, dibenz-a-l-pyrene is somewhere
11 around 250 times more carcinogenic.

12 BY MR. WESTERFIELD:

13 Q That's good enough. And do those have
14 high or low solubility?

15 A In the terms of solubility, they're more
16 or less than benzoapyrene, but I need to clarify
17 that in terms of solubility they're low, meaning
18 very little of them goes into water. But you have
19 to remember that only one part per million is
20 human health factor. And the solubilities for
21 benzoapyrene are higher than that.

22 Q Okay. So assuming that solubility, and
23 let's say assuming that Bay mud is a relatively
24 impermeable layer that may overlies that
25 contamination, would that have a tendency to

1 essentially cap the PAHs in place and prevent
2 their migration into the Bay?

3 A If the Bay mud is impermeable, just by
4 definition if it's impermeable then it would mean
5 there would be no penetration, no passage through
6 there. I'm not sure that's a good premise, to use
7 "impermeable" as the defining word for Bay mud,
8 not knowing what the permeability is.

9 Q Well, I think you've testified to that.
10 So, but with those assumptions?

11 A Well, if you're going to assume that you
12 have some impermeable layer, then by definition
13 you're not going to have movement in that
14 direction.

15 Q Okay. And have you -- are you aware of
16 the, I guess the process ongoing with the Water
17 Board between PG&E and the Regional Water Quality
18 Control Board about the remediation of
19 contamination at the site?

20 A I was not before the testimony today.

21 Q So I guess that means you have not
22 discussed any of your concerns with the Water
23 Board.

24 A No, I have not.

25 Q Nor have you attempted to make any

1 suggestions to the Water Board that they
2 incorporate your concerns into their process and
3 take any steps to alleviate your concerns as part
4 of their process.

5 A No, I have not.

6 Q As far as you're aware, has the City
7 done that?

8 A I am not aware that they have.

9 Q Have you voiced any of your concerns
10 with DTSE?

11 A I have not.

12 Q Are you aware if the City has voiced any
13 of your concerns to DTSE?

14 A I don't think I'd be privy to that
15 anyway, but I am not.

16 MR. WESTERFIELD: That's all I have.

17 COMMISSIONER PERNELL: No more
18 questions?

19 MR. WESTERFIELD: No more questions.

20 HEARING OFFICER VALKOSKY: Mr. Rostov?

21 MR. ROSTOV: I just have a very few.

22 CROSS-EXAMINATION

23 BY MR. ROSTOV:

24 Q This is more of a curiosity question,
25 but when you were talking about petroleum forensic

1 labs, is one of the methods that would be used at
2 those labs chromatography to determine --

3 A Oh, they would all be based on some type
4 of chromatographic separation.

5 Q Okay, and I was just looking through
6 your list of articles. You have dozens of
7 articles on that topic; is that correct?

8 A Yes, I do.

9 Q Okay. And then you're familiar with the
10 final offshore sediment characterization report
11 dated May 18th, 2001 prepared by URS?

12 A Yes, I am.

13 Q And according to the first line of the
14 executive summary, they get their sampling in
15 January 2001?

16 A Yes, that's what it states.

17 Q Okay. At that time, when they designed
18 their sampling program, could they have designed a
19 program, a sampling regime that would have
20 addressed the concerns that you're raising today?

21 A Yes.

22 MR. ROSTOV: No more questions.

23 COMMISSIONER PERNELL: I missed that
24 one. Would you restate that? He answered yes.

25 BY MR. ROSTOV:

1 Q I essentially asked him, and I'll ask
2 him again, at that time in January 2001, when URS
3 did the sampling, could they have designed a
4 sampling regime or a program where they would have
5 addressed the issues raised by Dr. Fetzer today?

6 A Yeah, I can actually elaborate. As I
7 said before in some of my scientific activities on
8 the work that's been done on harbor sediments that
9 did that kind of fingerprinting, and there was
10 actually a study that was ongoing, the National
11 Institutes for Standards and Technology, some of
12 the environmental agencies for the federal
13 government and for the state of Maryland did some
14 in Baltimore Harbor, specifically to do that sort
15 of thing.

16 COMMISSIONER PERNELL: I guess my
17 misunderstanding, did you say could they or did
18 they?

19 MR. ROSTOV: I said could they --

20 COMMISSIONER PERNELL: Could they.

21 MR. ROSTOV: -- have done a study that
22 would have addressed his concerns.

23 COMMISSIONER PERNELL: Okay.

24 MR. ROSTOV: And he answered --

25 COMMISSIONER PERNELL: And they could

1 have.

2 MR. ROSTOV: Right, in January 2001.

3 COMMISSIONER PERNELL: Right.

4 HEARING OFFICER VALKOSKY: Is that it,

5 Mr. Rostov?

6 MR. ROSTOV: Yes, that's it.

7 HEARING OFFICER VALKOSKY: Mr. Ramo?

8 MR. RAMO: A few questions.

9 CROSS-EXAMINATION

10 BY MR. RAMO:

11 Q So, Dr. Fetzer, following up on this
12 fingerprinting idea, the number of PAHs that they
13 tested for were not enough to allow the kind of
14 fingerprinting you're referring to as the source?

15 A Yes. The 16 EPA PAHs are -- the list
16 was designed for a totally different purpose.

17 Q Now, in your testimony at page two, and
18 I'm looking at response four to question four --
19 Do you have that before you?

20 A Yes, I do.

21 Q -- you indicate that -- This is just a
22 preliminary question to make sure we're on the
23 same base here -- you indicate that "PAHs are
24 found in all petroleum-based mixtures, including
25 crude oils, refined fuels, fuel combustion

1 products, and lubricating oils"; is that correct?

2 A Yes, it is.

3 Q How exclusive a marker is benzoapyrene?

4 A Benzoapyrene in itself? Not very, as
5 far as source. It's ubiquitous, and the key, even
6 for the 16 is the relative concentrations of those
7 16 to each other, differ depending on source. But
8 because there's such a wide number of sources, you
9 really need to look at more than just those 16.

10 Q Is benzoapyrene found in the combustion
11 products of natural gas?

12 A At trace levels, yes.

13 Q Is it found in oil distillate, like
14 kerosene?

15 A At very trace levels, yes.

16 Q When you were going through the various
17 possible scenarios of sources, I believe one you
18 mentioned was, and just correct me if I have this
19 wrong, ring washing, PAHs from the air into the
20 Bay?

21 A Well, one of the sort of almost
22 ubiquitous sources of PAHs is PAHs occur in the
23 combustion of diesel and gasoline engines, and
24 some of that gets suspended in particulate matter,
25 and then when you have rainfall, that will be

1 carried by the rain and would enter the bay that
2 way. So that is one source of PAHs.

3 Q If rainfall was washing combustion
4 products coming out of the emissions from Unit
5 Three, would the PAHs fall out quickly for the
6 stack or would they be dispersed? As a sediment
7 chemist, can you answer that question?

8 A The PAHs are generally contained in very
9 fine particulate matter, which would be carried
10 away and dispersed.

11 Q Okay, and I guess I was focusing and
12 trying to think in terms of if it was raining in
13 San Francisco and the products are coming out of
14 the stack, would they tend to be washed down as
15 particulates near their discharge point, or do you
16 know?

17 A It's likely that they would be, but the
18 levels of PAH in combustion gases of that sort are
19 extremely low. So it would not be what I would
20 term significant on the order of significance like
21 what we've seen the soil and sediment samples on
22 site.

23 Q Okay. Mr. Smith, the advisor to one of
24 the Commissioners on the siting committee, asked
25 you about another scenario which I'll call the

1 suck-and-discharge scenario. And I gather the
2 cause of the question was the interesting
3 coincidence in the fact that the hottest spot of
4 all is near the intake, and the next hottest spot
5 is near the discharge.

6 Do you recall him asking you about that?

7 A I do.

8 Q And I gather, while you thought it was
9 possible, you didn't think it was likely because
10 you felt that PAHs might precipitate out before
11 getting to the discharge point? Did I understand
12 that correctly?

13 A Well, the mechanism for something like
14 that to occur requires the amount of PAH that's in
15 the water or carried by the water and going in to
16 then fall out in a specific spot with the outfall,
17 which would have to have some very specific
18 dynamics. Because if it's prevalent on the intake
19 to the point where it's going to be soluble or
20 carried well enough to be sucked into the plant,
21 then it's got to be something drastically
22 different on the other end, or it wouldn't fall
23 out as readily.

24 And so what you have to say is, is there
25 some great drastic difference between the

1 dynamics, the water, whatever in those two areas,
2 and my opinion is, it's not likely. The water is
3 basically the same in those two spots as far as
4 the levels of salinity or PAH or other factors
5 that may affect solubility.

6 Q Now, what you thought is more likely is
7 the actual construction of Unit Three during that
8 period of time might have penetrated a
9 semipenetrable barrier, whether Bay mud or
10 something else; is that correct?

11 A That seems plausible, if you accept the
12 idea that the geology and there may be these
13 impermeable layers. If you go in and do
14 construction that cuts into those impermeable
15 layers, you no longer have the integrity that you
16 had before you did. And in order to be an
17 impermeable barrier, it can't have holes in it.
18 If you go and make holes, it's not impermeable
19 anymore. And so you may see a hot spot coming
20 through those holes.

21 Q And I gather you were not, at least in
22 terms of the testimony, you were not persuaded, at
23 least by Geomatrix regarding their analysis of
24 DNAPL being caught in some trough behind low-
25 permeability Bay mud; is that correct?

1 A That's correct.

2 Q And that's based on the sampling that
3 showed such material might be, the benzoapyrene at
4 least might be into the bay.

5 A Well, the Geomatrix idea to me was
6 mainly supposition, because they didn't sample
7 beyond the barrier to see if they were right. And
8 when URS did it in the few spots in their study,
9 they did find high levels, which shows that either
10 Geomatrix was wrong or there's some other
11 mechanism that's creating very high levels of
12 PAHs.

13 Q There were questions I believe by
14 Commissioner Pernel about short of doing
15 additional investigation whether there were
16 techniques that might avoid the problems,
17 notwithstanding anything you might find in later
18 data sampling, and I notice that one of the
19 consultants talked about a slurry wall as a
20 recommendation I believe in -- well, I'll let you
21 characterize who might have done it.

22 Is that a technique that might avoid the
23 problem of contamination moving from onshore to
24 offshore?

25 A That was in the Fluor Daniel report. My

1 understanding, not being a civil engineer and the
2 background I did after looking at that and then
3 the description that was in the report, yes, it
4 was a remediation measure that they proposed to
5 ensure containment of the hydrocarbon material
6 onshore.

7 So my supposition is that it must be a
8 valid approach if they were willing to propose
9 that to PG&E.

10 Q So I gather, in conclusion, your
11 sampling recommendations are, one, define the
12 vertical and horizontal extent of contamination;
13 is that correct?

14 A Vertical, horizontal, and, you know,
15 essentially three-dimensional, because you need to
16 define issues of dynamics as well. We don't know
17 whether this is a static system or a dynamic
18 system as far as where the PAHs would occur, if
19 there is transport from one place to another.
20 Those are undefined and there are a lot of
21 suppositions out there, but nothing that's really
22 been proven.

23 Q So to get at those dynamics, would
24 you -- I gather one of your suggestions is to do
25 the more comprehensive fingerprinting testing to

1 see if a source, at least a category of source can
2 be identified; is that correct?

3 A That's correct, because some of the
4 suppositions about where the occurrences of
5 offshore PAHs are, are just that, they're
6 suppositions. You know, the ships spilling
7 creosote from piers, things of that sort, but they
8 should be identifiable.

9 Q And would you also recommend additional
10 shoreline monitoring to determine if there are any
11 groundwater paths into the bay?

12 A Yes, I would.

13 Q And to the degree that there are various
14 theories about infiltration onshore of the Unit
15 Three discharge system or the suck-discharge
16 scenario, would you recommend additional sampling
17 and testing within the discharge system?

18 A In the region of the discharge system?
19 Yes. Yes, I would.

20 Q Okay, thank you.

21 MR. RAMO: I have no more questions.

22 HEARING OFFICER VALKOSKY: Professor, to
23 your knowledge, could the Port require some of the
24 monitoring and other -- and testing that you're
25 describing as a condition for granting a land use

1 entitlement to the applicant?

2 THE WITNESS: I don't know. That's not
3 my area of expertise at all. I think that would
4 be something for the Commission to address to the
5 appropriate people at the Port of San Francisco.

6 HEARING OFFICER VALKOSKY: Okay, thank
7 you.

8 Any redirect?

9 MS. MINOR: Just a few questions.

10 HEARING OFFICER VALKOSKY: Okay.

11 REDIRECT EXAMINATION

12 BY MS. MINOR:

13 Q Dr. Fetzer, you were retained by which
14 department?

15 A The Port of San Francisco.

16 Q The Port of San Francisco. Did the Port
17 provide you with a copy of the site mitigation and
18 implementation plan, which is attached as -- which
19 is Appendix D to the application for
20 certification?

21 A No, they did not.

22 Q Okay. Are you aware of ongoing
23 discussions between PG&E and the Regional Board to
24 finalize a remedial action plan?

25 A I was not before the testimony today.

1 Q Have you seen a remedial action plan for
2 the Potrero site?

3 A I have not.

4 Q Were you retained by the Port to advise
5 it on aquatic biology issues?

6 A No, I was not.

7 Q Were you retained by the Port to advise
8 it on the design of the intake and outtake
9 structure for the proposed Unit Seven?

10 A No, I was not.

11 Q Okay. Can you -- If you can recall, the
12 documents that were provided to you, can you
13 provide us with a list, if you recall the
14 documents that were provided to you by the Port?

15 A I received copies of the Fluor Daniel
16 report that was prepared for PG&E, of the
17 Geomatrix report that was prepared for PG&E, the
18 URS report that was prepared for Mirant.

19 Q Now, there are several URS reports;
20 specifically which one?

21 A This is the final report that is
22 appended to my testimony. It is the one, Final
23 Offshore Sediment Characterization Report, Potrero
24 Power Plant, May 18th, 2001. And I was supplied
25 with the CEC staff report.

1 Q Okay. Any other documents, as far as
2 you can recall?

3 A None that I can recall.

4 Q Okay. And would you again, please, just
5 clarify quickly the purposes of your testimony
6 today?

7 A The purposes of my testimony were to
8 voice the concerns of the City and County of San
9 Francisco and the Port of San Francisco that the
10 studies that the studies that have been done to
11 date have not been comprehensive enough to assess
12 the scope of the contamination; specifically in
13 issues like the dynamics of the sources, and that
14 needs to be done prior to any decisions being made
15 that may subsequently affect remediation.

16 MS. MINOR: No further questions, thank
17 you.

18 HEARING OFFICER VALKOSKY: Just one
19 point of clarification, Dr. Fetzer. I take it you
20 clarify that last statement to characterize the
21 studies that have been done to date as those
22 studies which the Port provided you.

23 THE WITNESS: Right.

24 HEARING OFFICER VALKOSKY: Thank you.

25 Any recross?

1 MR. CARROLL: No, thank you.

2 MR. WESTERFIELD: No, thanks.

3 MR. ROSTOV: No.

4 MR. RAMO: No.

5 HEARING OFFICER VALKOSKY: Anything else
6 for Dr. Fetzer?

7 Okay. With that, the committee would
8 like to thank and excuse the witness.

9 COMMISSIONER PERNELL: Thank you,
10 Doctor.

11 (The witness was excused.)

12 HEARING OFFICER VALKOSKY: Do you have
13 any exhibits you would like to move, Ms. Minor?

14 MS. MINOR: Yes, please. I would like
15 to move into the record Exhibit 43, which is the
16 prepared testimonies and resumes of Carol Bach and
17 John Fetzer regarding waste management.

18 HEARING OFFICER VALKOSKY: Is there
19 objection, Mr. Carroll?

20 MR. CARROLL: No objection, as long as
21 the record is clear, and I actually think it is,
22 but I'll restate it anyway, that Exhibit B to
23 Dr. Fetzer's testimony appears on its face to be a
24 URS-produced Mirant document, and I just want the
25 record to be clear that it's been modified in

1 certain respects, but I don't have any objection
2 to it being entered.

3 HEARING OFFICER VALKOSKY: Okay. Any
4 objection?

5 MR. WESTERFIELD: No objection.

6 HEARING OFFICER VALKOSKY: With no
7 objection, Exhibit 43 is admitted.

8 Is there any public comment on the topic
9 of waste management?

10 Seeing none, we'll close the record on
11 this topic.

12 Okay. At this point there is no public
13 comment. We'd like to take a brief five-minute or
14 so recess and we will reconvene with the
15 conference portion, the last portion of today's
16 events.

17 (Thereupon, the hearing was
18 adjourned at 5:30 p.m.)

19 --oOo--

20 *****

21 *****

22 *****

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission public hearing; that it was
thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
hearing, nor in any way interested in outcome of
said matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 7th day of July, 2002.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

In the Matter of:)
)
Application for Certification) Docket No.
for Mirant Corporation's) 00-AFC-4
Potrero Power Plant)
Unit 7 Project)
)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Commissioner, Presiding Member

HEARING OFFICER AND ADVISOR PRESENT

Stanley W. Valkosky, Hearing Officer

Michael Smith, Advisor to Commissioner Keese

STAFF AND CONSULTANTS PRESENT

William W. Westerfield, III, Staff Counsel

Mark Pryor, Project Manager

Kevin Kennedy

APPLICANT

Michael J. Carroll, Attorney
Latham & Watkins

Mark Harrer
Mirant Corporation

INTERVENORS AND CONSULTANTS

Jacqueline Minor, Deputy City Attorney
City and County of San Francisco

William B. Rostov, Staff Attorney
Communities for a Better Environment

Alan Ramo
Our Children's Earth Foundation & Southeast
Alliance for Environmental Justice

Michael McCormick
Gruneich Resource Advocates

P R O C E E D I N G S

5:45 p.m.

COMMISSIONER PERNELL: Mr. Valkosky.

HEARING OFFICER VALKOSKY: Okay, thank you. At this time we've had a representative of another one of the intervenors join us.

If you could identify yourself for the record, please.

MR. McCORMICK: My name is Michael McCormick, representing the Neighboring Potrero Owners Coalition.

COMMISSIONER PERNELL: Is that residential owners or industrial owners?

MR. McCORMICK: It's not industrial, it's -- there are some small retail, there are some manufacturing, and then there are some shipping.

COMMISSIONER PERNELL: Small business owners?

MR. McCORMICK: Yes.

HEARING OFFICER VALKOSKY: Okay. So commercial owners.

MR. McCORMICK: Right.

HEARING OFFICER VALKOSKY: Thank you.

As previously noticed, the committee

1 indicated we would conduct this conference
2 following the conclusion of the evidentiary
3 hearings. There are basically three purposes to
4 this conference. We want to have the parties
5 update us to the best extent possible on the
6 status of any outstanding information, determine
7 any refined estimates for the time required for
8 future hearings, and in that regard, we would be
9 interested in any corrections to the time
10 estimates, or the desire to present direct or
11 cross-examination as reflected on the handout
12 which you all have had for about a week and a
13 half. And finally, hear the opinions of the
14 parties on which topics each believes should be
15 scheduled next, and discuss any relevant concerns.

16 So with those three purposes in mind,
17 and I'd like to stress that this is a limited
18 conference, let's proceed. I'd prefer to go on a
19 party-by-party basis, and so to the extent
20 possible, please refer to the outline mentioned.

21 Okay. Starting with Mr. Carroll, now,
22 there is some information you may have that I'm
23 sure everyone is interested in. I note that on
24 July 11th you filed your request for an amended
25 final determination of compliance with the

1 district?

2 MR. CARROLL: That is correct.

3 HEARING OFFICER VALKOSKY: Do you have
4 any knowledge of the procedure that the district
5 is going to follow, and by that I mean are they
6 going to have to revise just the FDOC, reissue of
7 PDOC or what is the status?

8 MR. CARROLL: I do not know
9 specifically. I have a meeting set for tomorrow
10 morning with Brian Bunker, who is the acting
11 district council for Bay Area to discuss exactly
12 that.

13 HEARING OFFICER VALKOSKY: Okay, and I
14 suppose that would encompass the time required by
15 the district?

16 MR. CARROLL: Yes. I didn't get a
17 general indication from Mr. Bunker that the Air
18 District did not see any issues -- in fact,
19 they're supportive of the amendment -- but that
20 was the extent of the response that we've gotten
21 back. But tomorrow I expect to get a detailed
22 response, including a time line for any actions
23 that they think they need to take.

24 HEARING OFFICER VALKOSKY: Okay. And
25 when would you inform the committee and the other

1 parties as to the results of that?

2 MR. CARROLL: Why don't we provide a
3 report within a week of tomorrow's meeting?

4 HEARING OFFICER VALKOSKY: That would be
5 fine.

6 MR. CARROLL: Okay.

7 HEARING OFFICER VALKOSKY: Okay. I note
8 for the record the switchyard amendment has been
9 filed on July 16th to your knowledge; is that a
10 complete amendment?

11 MR. CARROLL: Yes, it is, and that's
12 correct, it was filed on July 16th. When I say
13 it's complete, I guess -- from our perspective,
14 it's complete. We have not heard any -- We
15 haven't gotten any response from the staff.

16 HEARING OFFICER VALKOSKY: Right.
17 You've not heard from staff, and under a previous
18 ruling of the committee, any parties would have a
19 15-day period in which to request additional data
20 and you would have 15 days to respond. So as of
21 today you have not received additional data
22 requests or anything?

23 MR. CARROLL: We have not.

24 MS. MINOR: That was 15 days from
25 receipt?

1 HEARING OFFICER VALKOSKY: No, 15 days
2 from filing.

3 MS. MINOR: Okay.

4 HEARING OFFICER VALKOSKY: So basically,
5 that comes out to the end of the month.

6 MR. CARROLL: Well, let me be clear, we
7 did receive a data request from the Energy
8 Commission staff after the last hearings, but we
9 responded, or at least we thought we responded to
10 all of that in the filing itself. So when I say
11 we haven't received any further data requests, I
12 mean subsequent to the filing of the amendment.

13 HEARING OFFICER VALKOSKY: Yes. When I
14 referred to data requests, I meant requests that
15 you got after the filing.

16 MR. CARROLL: Okay. No, we have not.

17 HEARING OFFICER VALKOSKY: Okay. The
18 big question on everyone's mind, any information
19 on the status of the opinion from the National
20 Marine Fishery Service?

21 MR. CARROLL: Yes. The EPA did
22 initiate, formally initiate the Section Seven
23 consultation with National Marine Fishery Service
24 under the Endangered Species Act by letter dated
25 July 16th. I just got a copy of the letter today.

1 We will docket it.

2 I also have for the parties a schedule
3 that we've put together based on the July 16th
4 date as far as how we would anticipate or hope
5 things would proceed from here on out.

6 HEARING OFFICER VALKOSKY: Okay. We can
7 certainly all read the letter. Is there any
8 additional information you have other than that
9 which is contained on the handout?

10 MR. CARROLL: No, there isn't.

11 HEARING OFFICER VALKOSKY: Okay.

12 MR. CARROLL: As I said, we will docket
13 the July 16th letter and serve that on all the
14 parties, and we'll do that this week.

15 MR. WESTERFIELD: Mike, can I ask you a
16 question about timing?

17 MR. CARROLL: Yes.

18 MR. WESTERFIELD: Under October 21, you
19 mention the 90th, talk about 90 days, and then
20 NMFS must request from EPA an additional 60 days.
21 It's 60 days not 45? It's my recollection it's
22 45, but I could easily be wrong.

23 MR. CARROLL: Well, I would only say
24 that I'm not an expert on the timing, but the
25 person that wrote this memo is. So I am pretty

1 sure that she is correct, but I will confirm that
2 and if it's not correct I'll let everybody know.

3 MR. WESTERFIELD: Okay. And then the
4 other aspect of that is if NMFS were to request an
5 extension from EPA, is it something that EPA can
6 simply grant in their discretion, or is it
7 something that you need to -- they need to give
8 you notice of and give you an opportunity to
9 comment on, or do you get to voice an opinion on
10 whether an extension is needed?

11 MR. CARROLL: Yes. We do get to voice
12 an opinion on it, and in theory they're not
13 supposed to grant it unless we concur, but as a
14 practical matter, if we don't concur, then they
15 issue a biological opinion that we are not happy
16 with. So it's one of those rights that seldom get
17 exercised.

18 MR. WESTERFIELD: Okay, all right.

19 So I guess --

20 HEARING OFFICER VALKOSKY: Okay. I'm
21 sorry, Mr. Westerfield, did you have another
22 question?

23 MR. WESTERFIELD: I guess just the point
24 is, it sounds like it's something that could
25 easily be extended by NMFS should they choose to

1 do so.

2 MR. CARROLL: Yeah. I think the point
3 is, as a practical matter, if they requested an
4 extension, our position would probably be to grant
5 it to them because that would mean that they
6 needed additional time to complete the biological
7 opinion in a successful fashion.

8 What I will say, however, is that we did
9 meet with NMFS and obtained a commitment from the
10 Western Regional Director that they would not seek
11 an extension in this case. I would not say that
12 that is absolutely ironclad, but it was a
13 commitment from a very senior person at the agency
14 that they would endeavor to complete this within
15 the 90-day period without seeking an extension.

16 HEARING OFFICER VALKOSKY: Okay. Any
17 further questions on the NMFS? Mr. Rostov?

18 MR. ROSTOV: There's also an issue of
19 the essential fish habitat, and I was wondering if
20 there was an update on that. Is that on the same
21 or a similar time line?

22 MR. CARROLL: The EFH is, first of all,
23 not a mandatory consultation, and, second of all,
24 much shorter in nature than ESA. So our
25 assumption has been all along that the EFH

1 consultation would occur within the time line of
2 the ESA consultation, and nothing has caused us to
3 doubt that assumption and we haven't talked with
4 the agencies about the EFH consultation as well.

5 So yes, we would expect the EFH
6 consultation to happen, and to happen within the
7 time frame that you see here for ESA.

8 HEARING OFFICER VALKOSKY: Anything
9 further from any other parties on this?

10 Turning your attention to the outline,
11 Mr. Carroll, and I would note that there are two
12 topics missing from that. We've gotten a
13 continuation of cultural resources and haz mat on
14 certain limited issues. With those additions, are
15 there any major corrections you'd like to make to
16 either of the witnesses you propose, time for
17 cross-examination, the estimated time?

18 MR. CARROLL: There is nothing in
19 particular that I am aware of now. I suspect that
20 there will be some changes, but nothing that I'm
21 aware of right now.

22 HEARING OFFICER VALKOSKY: Okay. Yes, I
23 understand, this is just for future scheduling
24 purposes.

25 What about the topics which are --

1 MR. RAMO: I'm sorry, Mr. Valkosky, were
2 you asking all of us or just Mr. Carroll?

3 HEARING OFFICER VALKOSKY: No, I'm just
4 asking Mr. Carroll. I'll go on a party-by-party
5 basis.

6 How about the order of the topics for
7 future hearings?

8 MR. CARROLL: What I would say is that
9 our recommendation would be to continue as we
10 have, taking topics that are least likely to be
11 affected in a significant way by the choice of
12 cooling systems.

13 HEARING OFFICER VALKOSKY: I agree, and
14 what I would like is an identification --

15 MR. CARROLL: Which ones those are?

16 HEARING OFFICER VALKOSKY: Yes.

17 MR. CARROLL: Okay. Number four, power
18 plant reliability, and in this list, I don't want
19 to imply that these topics would not be affected
20 at all by a change in the cooling system, but I
21 think the -- I'm sort of picking out those where I
22 think the impacts would be the least.

23 Power plant reliability, noise, water
24 and soils, land use, air quality, public health,
25 socioeconomic resources, and local system effects,

1 with the caveat that on air quality we may want to
2 set that one aside until we've gotten a resolution
3 with issues at the Air District on that.

4 HEARING OFFICER VALKOSKY: I think you
5 can assume that that would be set aside while that
6 was resolved.

7 MR. CARROLL: But I think any of those,
8 all of those subjects would fall into the next
9 category of subjects that I think could be picked
10 up and handled, and would not be substantially
11 affected by changes in the cooling system.

12 HEARING OFFICER VALKOSKY: Okay, and
13 then conversely, the topics you did not identify
14 are the ones which, in your estimation, would be
15 most likely affected by the choice in cooling
16 system; is that fair?

17 MR. CARROLL: Yes, and one other that I
18 didn't mention was power plant efficiency. I
19 think that would fall into the category as well.

20 HEARING OFFICER VALKOSKY: Okay. I
21 assume you would assume the three continuation
22 topics in there too?

23 MR. CARROLL: Yes.

24 HEARING OFFICER VALKOSKY: Okay. All
25 right. Do you have anything else you'd like to

1 add?

2 MR. CARROLL: No, thank you.

3 HEARING OFFICER VALKOSKY:

4 Mr. Westerfield, before we begin, I realize it's
5 kind of an unanswered question right now, but do
6 you have any idea on the time staff will require
7 to review the Air District filing?

8 MR. WESTERFIELD: The Air District
9 filing?

10 HEARING OFFICER VALKOSKY: The
11 applicant's amendment to the Air District, yes.

12 MR. WESTERFIELD: Well, I mean, we have
13 until approximately the end of the month in order
14 to ask for any additional information, so I'm
15 assuming that they're going to need to take a look
16 at it in that time, in the 15-day time.

17 HEARING OFFICER VALKOSKY: No, I'm
18 talking about the Air District filing.

19 MR. WESTERFIELD: Oh, I'm sorry.

20 HEARING OFFICER VALKOSKY: The amendment
21 to the FDOC. How much time will staff need to
22 review whatever it is the district comes out with?
23 And I realize you're not certain what that is, I'm
24 just looking for a guideline.

25 Mr. Pryor?

1 MR. PRYOR: Although we normally request
2 three to four weeks after we get the FDOC to
3 incorporate conditions into other work,
4 considering the nature that this has been a
5 reduction in the emissions, if on the surface it
6 still looks to be an improvement, I would not
7 anticipate more than two weeks from the time the
8 FDOC or the amended FDOC is issued and provided to
9 us in order to do a supplemental assessment.

10 HEARING OFFICER VALKOSKY: And that
11 includes the production of supplemental testimony,
12 if so required?

13 MR. PRYOR: Yes.

14 HEARING OFFICER VALKOSKY: Okay, thank
15 you.

16 Okay, Mr. Westerfield, the same question
17 but regarding the switchyard amendment? You have
18 until either the 31st of this month or August 1st,
19 depending on how you count time to --

20 MR. PRYOR: Mark Pryor again. I would
21 point out the amendment was docketed on July 17th,
22 not the 16th.

23 HEARING OFFICER VALKOSKY: I'm sorry,
24 okay.

25 MR. PRYOR: And that's selfish interest,

1 because my supervisor will have to do the work
2 with staff, and it looks like we have up until a
3 week from tomorrow, 8/1.

4 It has been provided to staff. I
5 received it on the 18th. I have not had an
6 opportunity to meet with staff to go over it and
7 to see whether we have any additional items.

8 There is a question in my mind what we
9 would have to issue, if anything, additional
10 analysis. That's a topic that has to be addressed
11 with technical staff.

12 HEARING OFFICER VALKOSKY: Okay. So
13 that's -- The update is that's a subject of staff
14 discussions, right?

15 MR. PRYOR: Yes, sir.

16 HEARING OFFICER VALKOSKY: Thank you.
17 And again, either member of staff, any further
18 information from the National Marine Fishery
19 Service or any other agency that would be useful?

20 MR. PRYOR: The National Marine Fishery
21 Service, I spoke to them last week, and they had
22 indicated that they were expecting the initiation
23 consultation at any time from EPA. It appears as
24 though that has happened. So I'm sure they're
25 getting to work on it.

1 We have already mentioned the FDOC. We
2 don't know what characteristics that will take,
3 whether they will go through another process or
4 hopefully just an amendment that will be easy to
5 deal with. Fish and Game does not have permits,
6 but they will be available at the hearings for
7 aquatic bio.

8 And BCDC, their report was issued a few
9 months back. Ms. Lacko is not here, I had hoped
10 she'd show up but she hasn't, but she will be
11 available to present the report at any hearing
12 that you need. It appears it would be land use
13 and aquatic bio/cooling options. She will be able
14 to address the report, the content of the report,
15 because insofar as what's been -- that's what's
16 been approved by her commission. She cannot go
17 outside the extent of that report.

18 HEARING OFFICER VALKOSKY: Okay. How
19 about any interaction involving the NPDS permit or
20 Regional Water Quality Board?

21 MR. PRYOR: The status of the NPDS
22 permit is unchanged from the time of the
23 prehearing conference.

24 HEARING OFFICER VALKOSKY: And refresh
25 me as to what that status is.

1 MR. PRYOR: There was a draft permit
2 that was issued about a year ago, but to our
3 knowledge there has been no other movement on it.

4 HEARING OFFICER VALKOSKY: Okay. To
5 your knowledge, is there any plan for further
6 movement on it by the Board?

7 MR. PRYOR: To my knowledge there is
8 none.

9 HEARING OFFICER VALKOSKY: Okay, thank
10 you.

11 Your preference for the order of topics
12 for future hearings?

13 MR. WESTERFIELD: Yes. I think that
14 we'd generally follow the outline that's listed in
15 your tentative remaining topic schedule, so we
16 would support continuation of TSE, facility
17 design, power plant efficiency and power plant
18 reliability, noise, water and soils, land use, air
19 quality, public health, socioeconomic resources,
20 LSE, and the -- or in some other order, picking up
21 the incomplete or uncompleted topics that have
22 already been started.

23 In short, we would support the idea of
24 reserving aquatic biology and alternatives, and
25 portions of these other topics associated with

1 those, because of the remaining question about the
2 cooling alternative.

3 HEARING OFFICER VALKOSKY: Another topic
4 would be visual; is that correct?

5 MR. WESTERFIELD: And we would also
6 reserve visual, yes.

7 HEARING OFFICER VALKOSKY: And when you
8 say reserving, that means keeping those topics and
9 also, I assume, local systems effect for the
10 latter topic? Am I understanding you correctly?

11 MR. WESTERFIELD: We hadn't thought to
12 hold back on local system effects, so --

13 HEARING OFFICER VALKOSKY: Oh, okay,
14 that could just be my misstatement then.

15 Do you have any dramatic changes to the
16 witnesses you'll present or whether or not you'll
17 cross-examine, other than that as reflected on the
18 handout?

19 MR. WESTERFIELD: Based upon our
20 experience in the last couple of days, we'd
21 probably add a little bit of time in a couple of
22 places.

23 HEARING OFFICER VALKOSKY: All right.
24 Could you give me at least a representative, or
25 just at least the topic identification?

1 MR. WESTERFIELD: Right. Say water and
2 soils, considering the issues that are involved,
3 we'd certainly bump it up from ten minutes to at
4 least 30 minutes.

5 HEARING OFFICER VALKOSKY: So you're
6 disowning Mr. Ratliff's testimony, I take it?

7 MR. WESTERFIELD: We're just building
8 upon it.

9 HEARING OFFICER VALKOSKY: Okay.

10 MR. WESTERFIELD: And I think it might
11 also be useful to have Mike Ringer come back as
12 part of that panel. I can see that we'll need
13 closer to an hour for cross-examination rather
14 than 30 minutes. I mean, we would have changes in
15 the timing for aquatic biology, but since we're
16 putting it off I don't see the need to mention
17 that.

18 HEARING OFFICER VALKOSKY: You only
19 think we're putting it off. No, never mind, just
20 continue.

21 (Laughter.)

22 MR. WESTERFIELD: Well, I guess that was
23 a little -- said right.

24 Then socioeconomic resources we would,
25 for example, ask for cross-examination of closer

1 to an hour instead of 30 minutes. Local system
2 effects, we'd do the same thing, raise our cross-
3 examination time from 30 minutes to an hour.

4 Nothing dramatic, but -- And that's all
5 we can think of.

6 HEARING OFFICER VALKOSKY: Okay. Any
7 other matters you'd like to bring to everyone's
8 attention?

9 MR. WESTERFIELD: I don't think so.

10 HEARING OFFICER VALKOSKY: Ms. Minor?

11 MS. MINOR: Okay.

12 HEARING OFFICER VALKOSKY: Let's see, if
13 you have any additional information, please
14 provide it; otherwise, we'll go -- And this goes
15 for the other parties too -- if you have
16 additional information, let us know; otherwise,
17 just focus on the time and witness estimates and
18 your suggested order of topics.

19 MS. MINOR: I think the one thing that I
20 will bring to the committee's attention is that
21 the City, through the City's Public Utilities
22 Commission, has had two very early preliminary
23 discussions with representatives of Mirant about
24 an alternative hybrid cooling system that's an
25 alternative to the one that's proposed by the

1 staff.

2 Our PUC has developed just a high-level
3 schematic of what that could potentially look
4 like. I have copies for everyone today. We are
5 going to do more internal work, and we've talked
6 to Mirant and I've talked to a couple of the other
7 intervenors about having a session that was
8 similar to the all-parties session on air-cooled
9 condenser that I think we had probably six weeks
10 ago now that we found to be very effective.

11 We are looking at, because so many
12 people are not available in August, we are looking
13 at convening, and the City would host this
14 meeting, September 9th is the date we're looking
15 at. It seems far off, but again, so many people
16 were not available in August, and then that very
17 first Monday in September is Labor Day.

18 The last meeting, representatives from
19 the staff also attended. The City has not decided
20 yet whether we'll do a site tour, but if people
21 are interested in the site tour, we can do that.

22 Let me pass out the schematic that we're
23 talking here about.

24 HEARING OFFICER VALKOSKY: Okay. If you
25 could just clarify for me again, who will be

1 invited?

2 MS. MINOR: We will invite all the
3 parties and the staff.

4 HEARING OFFICER VALKOSKY: Okay. And
5 the purpose of the meeting?

6 MS. MINOR: The purpose of the meeting
7 would be to give all of the parties an opportunity
8 to look at a further possible alternative for a
9 cooling system for Unit Seven.

10 HEARING OFFICER VALKOSKY: All right,
11 thank you.

12 MS. MINOR: And again, this is very
13 preliminary. The City has not approved it, it's
14 been developed at the working technical level. We
15 have no information about costs, feasibility, and
16 so forth. It's just right now a high-level
17 schematic about an idea that could possibly work.

18 HEARING OFFICER VALKOSKY: No, that's
19 significant new information, thank you.

20 Anything further on that line?

21 MS. MINOR: And we'll actually send out
22 a written notice confirming the meeting on the
23 9th.

24 HEARING OFFICER VALKOSKY: Right. Yes,
25 I assume since it's going to be a City meeting, it

1 will be under City procedures.

2 Okay. With that --

3 MS. MINOR: And --

4 HEARING OFFICER VALKOSKY: I'm sorry, go
5 ahead.

6 MS. MINOR: I was just going to proceed
7 with adjusting some times.

8 HEARING OFFICER VALKOSKY: Go ahead.

9 MS. MINOR: Okay. Kind of based on the
10 experience the last couple of days, what I would
11 like to do is adjust downward actually some of the
12 time for direct testimony.

13 So if we go to facility design, I'm
14 going to reduce the City to 40 minutes;
15 reliability, reduce that to 30 minutes; water and
16 soils, reduce that to an hour; visuals, 30
17 minutes; land use, 45 minutes; air quality, 45
18 minutes; public health, one hour; local system
19 effects, 30 minutes; alternatives, two hours.

20 MR. WESTERFIELD: I'm sorry, what was
21 local system effects?

22 HEARING OFFICER VALKOSKY: Thirty
23 minutes.

24 MS. MINOR: Thirty minutes.

25 MR. WESTERFIELD: Thank you.

1 COMMISSIONER PERNELL: And what was land
2 use?

3 MS. MINOR: Land use I reduced to 45
4 minutes.

5 HEARING OFFICER VALKOSKY: You've
6 captured the spirit. I appreciate it.

7 MS. MINOR: Now, in terms of we're
8 specifically looking at those topic areas that we
9 believe we can proceed on and not directly affect
10 the cooling options --

11 HEARING OFFICER VALKOSKY: Or affect to
12 the smallest possible level, yes.

13 MS. MINOR: Okay. Continuation of
14 transmission system engineering. We can probably
15 do power plant efficiency, although there are some
16 efficiency issues as they relate to some of the
17 cooling options. We would not include noise,
18 because noise is a significant issue for the air-
19 cooled condenser, so I would defer that.

20 Air quality would be deferred only until
21 we hear from the Air District on Mirant's
22 amendment. There are public health impacts
23 related to the cooling system, but I do think we
24 can proceed with that. Socioeconomics, we can
25 proceed with that.

1 I would like to see local system effects
2 and alternatives together, and I think
3 alternatives we do -- we should defer until after
4 the cooling system is decided. So based on that,
5 I would defer local system effects as well.

6 I also did not include water and soils
7 in my list, and I believe both Mirant and the
8 staff did, because there is enough overlap with
9 aquatic biology that it seems it makes sense to do
10 those together.

11 COMMISSIONER PERNELL: So you won't
12 include --

13 MS. MINOR: I would defer water and
14 soils to do that with aquatic, in the same group
15 with aquatic biology.

16 HEARING OFFICER VALKOSKY: How about
17 land use?

18 MS. MINOR: Land use, there is a portion
19 of land use that is again tied into the aquatic
20 biology issues. The BCDC access issues are only
21 relevant if, there's the once-through cooling
22 option, and so I would prefer not to segment the
23 land use issues and do it all together.

24 And then also the continued topics of
25 cultural resources and hazardous materials. I

1 would put those on the list of the ones we can
2 proceed with.

3 HEARING OFFICER VALKOSKY: And visuals
4 would go where?

5 MS. MINOR: Visuals, the ACC,
6 potentially quite significant impact on visuals,
7 and so I would defer visuals to the resolution of
8 the cooling option.

9 HEARING OFFICER VALKOSKY: And facility
10 design? That would be --

11 MS. MINOR: I think you'd defer that
12 until you know what the cooling system looks like.

13 HEARING OFFICER VALKOSKY: All right.

14 Okay, thank you. Do you have anything
15 else?

16 MS. MINOR: No, I do not.

17 MR. WESTERFIELD: I just have one
18 question, Jackie. On your possible gathering on
19 the 9th, I assume this would be an informational
20 presentation only, rather than some sort of give-
21 and-take across the table about who is going to do
22 what?

23 MS. MINOR: Right.

24 MR. WESTERFIELD: Okay, great.

25 MR. CARROLL: Well, I would not

1 necessarily characterize it that way. This would
2 be similar to the meeting that we had which was
3 held in our offices on air-cooled condensers.
4 Mr. Kennedy attended. And there was a fair amount
5 of give-and-take and I would hope that there would
6 be at this one as well.

7 MS. MINOR: But it was informational as
8 opposed to advocacy.

9 MR. CARROLL: Yes.

10 MS. MINOR: I mean, and maybe
11 Mr. Kennedy can speak to whether he was
12 comfortable being there.

13 MR. KENNEDY: I was certainly
14 comfortable being there. I think the question
15 that Bill is getting at is one of whether we need
16 to have this as a noticed workshop in the sense of
17 the Energy Commission staff ability to be part of
18 negotiations and give-and-take. I was there as an
19 observer and did not feel comfortable getting into
20 a give-and-take sort of thing, but seeing what was
21 going on and being discussed, there was certainly
22 no problem.

23 And I think that may be something that
24 the parties can, amongst ourselves, discuss and
25 figure out how to handle this aspect leading up to

1 the meeting, whether we need it noticed by the
2 Energy Commission staff as a workshop.

3 COMMISSIONER PERNELL: Okay. What is
4 the intent of the -- Well, scratch that. What is
5 the preference of the group, to have it -- It
6 sounds like staff can't participate in a give-and-
7 take if it's not noticed; is that what you're
8 saying?

9 MR. WESTERFIELD: Well, by give-and-
10 take, I think what Mr. Kennedy is talking about
11 would be sort of any -- certainly any negotiation
12 in terms of trying to settle or resolve certain
13 issues that would be connected with the --

14 COMMISSIONER PERNELL: All right, but
15 that's not what this is.

16 MR. KENNEDY: That's not what it's
17 about, right?

18 MS. MINOR: No.

19 MR. WESTERFIELD: So I think that's
20 beyond the line or almost out of line. Certainly
21 on the acceptable side of the line is an exchange
22 of information on just what this cooling system
23 could be and possibilities, the options and that
24 sort of thing from a technical point of view.

25 I guess what gets fuzzy is when one side

1 says, well, we'd like to do this and another party
2 says, well, we think it should be another way.
3 You know, will you consider that, and what do you
4 want, what does somebody else want. So it becomes
5 a discussion of tradeoffs of proposals and
6 counterproposals.

7 MR. CARROLL: Let me be clear. Now that
8 I have sort of a better sense of what everybody
9 means by give-and-take versus informational, I
10 probably should have just kept my mouth shut when
11 Jackie said it was informational --

12 (Laughter.)

13 MR. CARROLL: -- because the previous
14 meeting was give-and-take of information --

15 MS. MINOR: Yes.

16 MR. CARROLL: -- but there wasn't
17 negotiation, give-and-take in that sense. And I
18 would hope that this one would be the same, and my
19 preference would be to do it the same way that we
20 did it the last time, because it actually worked
21 very well and I would hate to change the dynamic,
22 frankly.

23 MR. PRYOR: This is Mark Pryor. I asked
24 counsel to bring this up for two reasons. One,
25 that any member of the public that may read the

1 transcript of today's discussion would know that
2 the Energy Commission staff or consultants if they
3 attend the meeting would be limited to exchange of
4 information only, that we would not be talking
5 about any other form of give-and-take, if you
6 will. I just wanted to make that clear.

7 MR. HARRER: Our understanding also is
8 that this would not be an open public meeting.

9 HEARING OFFICER VALKOSKY: Okay.

10 MS. MINOR: Yeah, let me clarify that,
11 in the event that's an issue. This is a meeting
12 that's being convened by the City Attorney's
13 Office with Ed Smeloff. Neither of us would be
14 required to notice this as a Brown Act meeting or
15 under our local Sunshine ordinance.

16 Certainly, any intervenor who wanted to
17 bring a guest, and we will specify what room it's
18 in and we'll have a room that's large enough to
19 accommodate 20, 30 people, but it is not a room
20 where 100 people could show up and expect to be
21 able to attend. But certainly, we don't intend to
22 exclude anyone who is interested in being there
23 and hearing more about this hybrid cooling option.

24 MR. PRYOR: There may be the instance
25 where staff or one of our consultants would just

1 have to remain silent and not participate, or it's
2 extremely rare in these sorts of things that we
3 would have to leave the room. I would not
4 anticipate that, judging from Dr. Kennedy's report
5 at the last meeting.

6 I just wanted full disclosure, if you
7 will.

8 HEARING OFFICER VALKOSKY: Well, and I
9 appreciate that, and I would also assume that the
10 second step to -- another step, not necessarily
11 the second step would be as appropriate, staff
12 may, in fact, end up conducting its typical public
13 workshops and negotiations on something that may
14 seem worthwhile; is that not correct?

15 MR. PRYOR: That is correct.

16 HEARING OFFICER VALKOSKY: Okay. I'm
17 sorry, Ms. Minor, anything else?

18 MS. MINOR: No, that's it for us.

19 COMMISSIONER PERNELL: Well, let me
20 understand. Are we -- Is the meeting on,
21 everybody is comfortable with that?

22 (Laughter.)

23 COMMISSIONER PERNELL: It appears that
24 it would be, the previous one was productive, so,
25 you know, I would want to hope that we could do

1 another one. As long as we're moving forward, I'm
2 happy.

3 HEARING OFFICER VALKOSKY: Okay.

4 Mr. Rostov, any additional information?

5 MR. ROSTOV: The new information just
6 relates to the submittal to the Air District, and
7 in that submittal we notice that Mirant relied on
8 source tests to reduce their estimation of their
9 production of pollution. And those source tests
10 weren't attached. So I don't know if we need to
11 do a data -- I mean, there's two things. It would
12 be nice to get the source test, and then it would
13 be nice to have an opportunity to look through
14 them and see if we need to ask some questions
15 about it.

16 And then the second point on that is we
17 believe, CBE, that the public -- at the Air
18 District there should be an opportunity for public
19 comment. And sometime in the near future, either
20 I'm going to call Brian Bunger or write him a
21 letter, probably in the next couple of days saying
22 that. So those were the two things I wanted to
23 say about it.

24 HEARING OFFICER VALKOSKY: Okay. Thank
25 you, and I certainly urge you to follow the Air

1 District procedure -- excuse me, voice any
2 concerns about the Air District procedure to the
3 Air District.

4 Mr. Carroll, how about the source test?
5 Is that something --

6 MR. CARROLL: I guess I'm not exactly
7 clear on what would be requested. What was
8 included with the submission was a table that
9 showed all of the source tests that were relied
10 upon.

11 Is the request for the raw data behind
12 all of the source tests?

13 MR. ROSTOV: Yes, exactly.

14 MR. CARROLL: I think that's pretty
15 voluminous.

16 HEARING OFFICER VALKOSKY: So are you
17 saying that it's burdensome, or --

18 MR. CARROLL: Yes, very much so. It
19 would seem -- I'm guessing that each of the source
20 tests, and there were probably 12 or 15, has a
21 backup data that's probably four or five inches
22 thick.

23 HEARING OFFICER VALKOSKY: How about
24 could you provide Mr. Rostov an opportunity to
25 look at the source tests, and then he could make

1 copies or extract whatever it is he wanted.

2 MR. CARROLL: Sure, that would be fine.

3 HEARING OFFICER VALKOSKY: Would that be
4 sufficient, Mr. Rostov?

5 MR. ROSTOV: Yes.

6 MR. HARRER: Or would you like, would
7 you prefer to have a reference to where to get
8 one?

9 MR. ROSTOV: No, because, I mean, that's
10 the problem. It seems like there's a shorter time
11 line on this, and --

12 MR. HARRER: Okay, that's fine.

13 MR. ROSTOV: -- trying to locate ten or
14 fifteen source tests doesn't --

15 HEARING OFFICER VALKOSKY: Yeah, so, and
16 again, after we've concluded, I will trust you
17 gentlemen to work out a mutually agreed-upon
18 compromise.

19 MR. CARROLL: Sure. I'll contact
20 Mr. Rostov and make arrangements for the source
21 test data to be made available to him for review.

22 HEARING OFFICER VALKOSKY: Okay.

23 MR. ROSTOV: Well, there's another
24 option, potentially. Could they put it on a
25 CD-ROM, or --

1 HEARING OFFICER VALKOSKY: Is that
2 doable, gentlemen?

3 MR. HARRER: It's not electronic. At
4 least, we don't have it electronically.

5 MR. CARROLL: Our consultants behind us
6 are saying no.

7 HEARING OFFICER VALKOSKY: Okay.

8 MR. ROSTOV: I guess I still have a
9 question. So the idea, we'd go through it and
10 look and see what we thought was relevant, but all
11 of it could be relevant, so what happens in that
12 instance? They would just provide it then, or --

13 HEARING OFFICER VALKOSKY: Well, I mean,
14 you could copy it, they could provide it. I guess
15 there is another option, and that is you could
16 obtain it from the Air District also.

17 MR. ROSTOV: I'm not sure if they're Air
18 District documents.

19 MR. CARROLL: They are all public
20 documents because they're all source tests that
21 were completed by other facilities and then
22 submitted to the appropriate agencies to verify
23 their own compliance, so they're all public
24 documents.

25 MR. HARRER: It's not all Region Nine,

1 though. It's not always local region.

2 COMMISSIONER PERNELL: All right. Well,
3 they have -- Mr. Harrer had said that you can
4 review it and copy whatever you want.

5 MR. ROSTOV: Okay.

6 COMMISSIONER PERNELL: If it's public
7 documents, then you should be able to obtain it
8 from somewhere, but again, that's an option that
9 perhaps you guys can work out.

10 What we want you to do is have access to
11 it.

12 MR. ROSTOV: Right.

13 MS. MINOR: Let me just clarify, make
14 sure that I understand, because I haven't had a
15 chance yet to talk to our air quality people and I
16 think we're probably also going to want to be in a
17 position to be able to file some comments with the
18 Air District.

19 Mike, are you saying that we can come
20 to, is it URS's office and look at the source
21 tests there?

22 MR. CARROLL: I think that's probably
23 where we would make them available, yes.

24 MS. MINOR: So that would be here
25 locally?

1 MR. CARROLL: Yes.

2 MR. PRYOR: I have a concern of staff's.
3 I don't understand the air issues. I don't know
4 what these source tests are, I'm not an air
5 quality engineer.

6 I would ask that if staff, the expert
7 needs to see those, that we could -- we'd be
8 afforded the same opportunity.

9 HEARING OFFICER VALKOSKY: Sure, and I
10 would also assume that staff, especially staff
11 would be able to access them through the District.
12 I mean, am I missing something there?

13 MR. PRYOR: Well, I don't know,
14 Mr. Valkosky. I may go to Tuan with this and he
15 says, yeah, I can get it, no problem. I just
16 don't know, I thought I'd bring it up.

17 MR. CARROLL: But I guess I would point
18 out that we're happy to make them available and we
19 will, but from my perspective, I'm not quite sure
20 what the relevancy is, because all these source
21 tests are is the information that Mirant looked at
22 to determine what level it was willing to live
23 with. And we have signed up to that level and we
24 will have to live with it.

25 HEARING OFFICER VALKOSKY: I understand

1 that, Mr. Carroll, and from my perspective the
2 short relevancy is that I can potentially head off
3 extensive examination in a future air quality
4 hearing over the availability of the source tests,
5 okay?

6 MR. CARROLL: Okay.

7 (Laughter.)

8 MR. CARROLL: That's sufficient basis
9 for us to make it available, and --

10 HEARING OFFICER VALKOSKY: I think
11 that's long-term efficiency, you know?

12 I'm sorry, Mr. Rostov, do you have any
13 preference for the order of the topics?

14 MR. ROSTOV: I had a couple of changes.

15 HEARING OFFICER VALKOSKY: Sure.

16 MR. ROSTOV: I had three witnesses, but
17 I'll just put them in as I go.

18 HEARING OFFICER VALKOSKY: Okay.

19 MR. ROSTOV: On facility design, I've
20 reduced that from three to two hours, the cross-
21 examination. On power plant efficiency, I've
22 reduced that from three to one hour. On noise, I
23 can reduce it from four to one hour. Visual
24 resources, I just need an hour for cross-
25 examination instead of four.

1 Then in the land use section, I wanted
2 to add two witnesses, and I can give you those
3 names or just submit them in written form in a day
4 or two.

5 COMMISSIONER PERNELL: Why don't you do
6 both.

7 MR. ROSTOV: Okay.

8 COMMISSIONER PERNELL: Give them to us
9 now, and then you can submit them.

10 MR. ROSTOV: Okay. For land use, the
11 names would be Allison Shore and David Frieberg,
12 F-r-i-e-b-e-r-g, and that would make our testimony
13 up to 50 minutes.

14 HEARING OFFICER VALKOSKY: Okay, and you
15 would then have a panel of five witnesses?

16 MR. ROSTOV: Right, exactly.

17 HEARING OFFICER VALKOSKY: Okay.

18 MR. ROSTOV: And public health, we're
19 going to add one witness, just from CBE, and her
20 name is Marsha Sims, and that would be 15 minutes
21 for that. On local systems effects, we can reduce
22 the cross-examination from six to three hours.

23 And then I just have one more question
24 about the Air that --

25 HEARING OFFICER VALKOSKY: Sure.

1 MR. ROSTOV: Once we review the source
2 tests, and also, I must admit preparing for this,
3 I haven't had time to review the submissions,
4 fully review the submissions regarding air. Will
5 we have an opportunity to do data requests if we
6 want?

7 HEARING OFFICER VALKOSKY: You know,
8 again, I don't want to open discovery. I would
9 recommend that the committee at that time would
10 entertain a motion and it would depend upon the
11 persuasiveness of the motion, rather than just
12 blanket opening, okay.

13 MR. ROSTOV: Okay, that's fine.

14 MR. CARROLL: And I guess I would simply
15 add, I mean, this is I guess proving out that no
16 good turn goes unpunished.

17 If the process of reducing our emissions
18 by 50 percent becomes overly burdensome, we will
19 simply withdraw the amendment.

20 HEARING OFFICER VALKOSKY: No, and
21 Mr. Carroll, I think what you're saying is not
22 that, although I understand your viewpoint, it is
23 the desire of the parties to preserve their
24 options in the future dealing with an as-yet-
25 unknown tangent, and I think that's what -- that's

1 the way I interpreted that, okay?

2 MR. CARROLL: Okay.

3 MR. ROSTOV: And the motion is fine.

4 That's exactly right.

5 And then for the order of topics, I am
6 going to -- I essentially agree with what the City
7 did, what the City's were.

8 HEARING OFFICER VALKOSKY: Okay.

9 Anything else, Mr. Rostov?

10 MR. ROSTOV: No. Oh, I just have one
11 more question for Mr. Carroll. Maybe this will
12 save me some time.

13 HEARING OFFICER VALKOSKY: Sure.

14 MR. ROSTOV: So in your amendment, are
15 those the emission limits for PM10 that you're now
16 estimating? Are those going to be federally
17 enforceable permit levels that you're going to put
18 in through a Title V permit?

19 MR. CARROLL: Yes.

20 MR. ROSTOV: Okay.

21 HEARING OFFICER VALKOSKY: Mr. Ramo,
22 first, any new information?

23 MR. RAMO: Yes, we were just thrilled
24 with Mirant's presentation on air quality, so we
25 just want to be able to explain to people how

1 great it is.

2 One thing I'll put on the record. Mike,
3 I believe we have an informal agreement that you
4 will be providing to us information regarding the
5 new emission credits used for offsets?

6 MR. CARROLL: Yes.

7 MR. RAMO: Okay. Basically, I asked the
8 same kind of information that was provided for the
9 other credits: location, when they were
10 generated, that kind of information.

11 That's all the new information I have.

12 MR. CARROLL: And just to be clear on
13 that, there really aren't any new credits, but
14 some of the certificate numbers have changed. And
15 so I just don't want people to think that we've
16 gone out and acquired credits that people haven't
17 previously seen before, so we'll provide sort of
18 an accounting so that people can track numbers as
19 they've changed.

20 HEARING OFFICER VALKOSKY: Mr. Ramo, any
21 changes in witnesses or times?

22 MR. RAMO: Yes, and since some of these
23 witnesses are joint witnesses and I was doing some
24 last-second confirmation with CBE -- Will, if I
25 get anything wrong, let me know, but on topic

1 number one, we do want to reserve some time for
2 cross-examination and I would put in 20 minutes.

3 On topic two, facility design, we will
4 be withdrawing our witness on that topic.

5 HEARING OFFICER VALKOSKY: Okay.

6 MR. RAMO: On topic number four, power
7 plant reliability, we will be withdrawing our
8 witness.

9 So believe it or not, I am reducing time
10 as well as adding.

11 HEARING OFFICER VALKOSKY: Well, yeah,
12 in the reductions, everyone has got the spirit. I
13 encourage everyone to --

14 MR. RAMO: All it took is three days of
15 lengthy hearings.

16 MR. CARROLL: Without food.

17 (Laughter.)

18 HEARING OFFICER VALKOSKY: Nothing like
19 a dose of reality to help everyone focus.

20 MR. RAMO: On topic number five, noise,
21 we were originally listing witnesses who really
22 are devoted to cooling water options. As long as
23 I understand that it would be the committee's
24 intention to allow testimony during the cooling
25 water options on noise to the extent it related

1 only to the cooling water issue, I would have no
2 problem withdrawing our witnesses on noise.

3 HEARING OFFICER VALKOSKY: Okay. That
4 would be the committee's intention.

5 MR. RAMO: Then I will withdraw OCD and
6 SAEJ's -- Well, I guess we have no time in cross-
7 examination; we'll keep it that way.

8 HEARING OFFICER VALKOSKY: I'm sorry,
9 what topic was that?

10 MR. RAMO: That was number five, noise.

11 HEARING OFFICER VALKOSKY: Okay.

12 MR. RAMO: For the same reason on number
13 seven, visual resources, we'll withdraw as least
14 Schlissel and Keith. CBE may still want to have
15 Karras testify.

16 MR. ROSTOV: No, I think we withdraw him
17 too on the same --

18 MR. RAMO: Okay. So we'll withdraw our
19 joint witnesses on number seven. And I will not
20 reserve any time for cross-examination on that
21 topic, number seven. Our intent would be to
22 extend visual resources and related cooling water
23 options and will be taken up at that time.

24 Going to issue number 13, local system
25 effects, I will Schlissel and Keith to Garbesi,

1 and change the direct from ten to thirty minutes.
2 And the same on number 14, alternatives, I will
3 add Schlissel and Keith to Garbesi, and change it
4 to thirty minutes.

5 And I would request, if it's possible,
6 since Schlissel and Keith are out-of-state
7 witnesses, that if local system effects,
8 alternatives, and cooling options could all be
9 reserved for the same period of hearings, that
10 would be appreciated.

11 COMMISSIONER PERNELL: Anyone have any
12 objections to that?

13 MS. MINOR: Well, that's consistent with
14 our recommendation.

15 HEARING OFFICER VALKOSKY: That was
16 local systems effects, cooling options, and what
17 was the other one?

18 MR. RAMO: Alternatives.

19 HEARING OFFICER VALKOSKY: Alternatives.

20 COMMISSIONER PERNELL: Because of our
21 out-of-town experts.

22 HEARING OFFICER VALKOSKY: Right, so the
23 preference is to have those during the same
24 period.

25 MR. RAMO: Yes.

1 HEARING OFFICER VALKOSKY: Okay.

2 MR. WESTERFIELD: Well, we're not sure
3 we're going to agree with that, actually.

4 HEARING OFFICER VALKOSKY: We're not
5 making any decisions right now, we're just getting
6 the input of the parties.

7 So are you disagreeing with having it
8 during the same period or with the order?

9 MR. WESTERFIELD: Yes.

10 HEARING OFFICER VALKOSKY: Okay.

11 MR. WESTERFIELD: We don't see the need
12 to have all of those done at the same time.

13 HEARING OFFICER VALKOSKY: Okay.

14 COMMISSIONER PERNELL: When you say the
15 same time, do you mean the same day?

16 (Laughter.)

17 COMMISSIONER PERNELL: The same group?

18 MR. WESTERFIELD: Sure. I mean, for
19 example, I think we're prefer to have alternatives
20 last. It may or may not necessarily get grouped
21 with aquatic biology, and at the same time, we
22 don't see the need to have local system effects
23 covered at the same time as aquatic biology.

24 COMMISSIONER PERNELL: Well, the need
25 would be because of transportation constraints, I

1 guess. I mean, I don't understand why -- Is it
2 because you have to have certain topics done first
3 before you can actually get to alternatives, or
4 it's just your preference not to have them?

5 MR. WESTERFIELD: Well, we just -- I
6 mean, I'm sympathetic to the idea of needing,
7 having to convenience witnesses who are interested
8 in testifying to the same thing, but at the same
9 time, I mean, I could see that aquatic biology is
10 something that's going to last a very, very long
11 time. And it's hard for me to perceive that a
12 witness from out of town might stay in town for
13 several weeks in order to -- or gosh knows how
14 long for that.

15 HEARING OFFICER VALKOSKY: Understood,
16 Mr. Westerfield, and I'm interpreting Mr. Ramo's
17 request as something that if it possible, and, you
18 know, that's what it is. Please realize, all
19 we're trying to do now is get enough information
20 so the committee can come up with a future
21 schedule which will satisfy no one, okay?

22 (Laughter.)

23 COMMISSIONER PERNELL: That's really
24 true.

25 MR. WESTERFIELD: Thank you.

1 COMMISSIONER PERNELL: But we want you
2 to know we're trying.

3 HEARING OFFICER VALKOSKY: Okay.
4 Anything else, Mr. Ramo?

5 MR. RAMO: Yes, and other than what I
6 just said in terms of those particular items, we
7 generally agree with the City's approach. I would
8 just add that I felt, from the perspective of our
9 clients, that Mirant and the City in good faith
10 began a discussion on looking at and investigating
11 various cooling water options. And, as I
12 indicated before, I felt that it was very
13 important to allow the parties to attempt to do
14 so. Because I think that ultimately has the best
15 chance of resulting in a solution that everybody
16 can live with.

17 If at some point Mirant, the City, who I
18 think are the two key players, frankly, with, of
19 course, the City responding to its constituents,
20 if they feel that that attempt is no longer
21 worthwhile, I think there is -- Even I have a
22 limit for waiting for the National Wildlife
23 Fishery Service. And if they start asking for
24 extensions, I think at some point we have to
25 address these issues.

1 And I'll just leave it at that.

2 HEARING OFFICER VALKOSKY: No, I agree.

3 I think you're right, at some point we do. Right
4 now I'm just letting things play out, in a sense.

5 Lastly, Mr. McCormick?

6 MR. McCORMICK: We have neither any new
7 information or any changes in any cross-
8 examination of the topics. And as far as the
9 topics order is concerned, we agree with the order
10 presented by the City.

11 COMMISSIONER PERNELL: Are you getting
12 our information? Did you get this topic list?

13 MR. McCORMICK: Yes.

14 COMMISSIONER PERNELL: Okay. So you are
15 on the mailing list?

16 MR. McCORMICK: Yes.

17 COMMISSIONER PERNELL: Okay.

18 HEARING OFFICER VALKOSKY: Okay. Is
19 there anything else anyone would like to discuss?

20 MS. MINOR: Well, I just would like
21 clarification as to I'm assuming we're not having
22 hearings anytime in August; is that correct?

23 HEARING OFFICER VALKOSKY: I think
24 that's pretty safe. Yes. It's short of a
25 guarantee, but I think it's pretty safe.

1 Okay. Any public comment?

2 COMMISSIONER PERNELL: Let me just close
3 by saying that first of all, it's going to take
4 the committee some time to digest the information
5 we've received over the last three days. And I do
6 want to say on behalf of the committee that I
7 appreciate everybody's patience, especially with
8 me, but we had a schedule, and my job is to kind
9 of shepherd us through that.

10 So we will try and not, given the time
11 and experience we just went through, we want to
12 try and not have as many subjects that we thought
13 weren't controversial, so I hate to think about
14 how long the controversial ones will last --

15 (Laughter.)

16 COMMISSIONER PERNELL: -- but again, I
17 want to thank you for getting through this. I
18 mean, the object is to get through the process.
19 And I think that everybody, and I especially
20 encourage the City and Mirant working together,
21 along with the intervenors coming up with some
22 additional options.

23 So I just wanted to say on behalf of the
24 committee and the Commission that I really thank
25 you for hanging in there with us on this. And, by

1 the way, if we wouldn't have done that, I don't
2 know if we would have gotten done. Because we
3 would have run out of time here. So you were
4 patient, I didn't get cursed out, so I'm happy
5 with that.

6 We will, the committee will send out
7 notices and, again, I don't think it will be
8 within the next couple of weeks, so I don't think
9 you need to worry about that. But you will get
10 noticed, and we will schedule to the best of our
11 ability groups of topics and go through them that
12 way, rather than having one day, going back,
13 waiting two weeks and having another day. And
14 it's kind of the preference of the committee. So
15 don't get mad with the hearing officer or staff or
16 anybody, it's strictly on the committee in terms
17 of the schedule.

18 But if we put out a schedule and for
19 some reason it doesn't fit, we need to know. We'd
20 probably need to know -- Is there a draft schedule
21 for us, or --

22 HEARING OFFICER VALKOSKY: No. What I
23 would like to know, and actually, a good
24 suggestion -- Well, I will attempt to contact the
25 parties informally by e-mail insofar as dates for

1 availability of witnesses and stuff are concerned,
2 unless the parties would like to take the
3 initiative and, within the next couple of weeks,
4 indicate which dates witnesses are not available.

5 COMMISSIONER PERNELL: And they have to
6 be legitimate reasons.

7 HEARING OFFICER VALKOSKY: Yes, for all
8 the topics, and I would suggest you cover as much
9 of the time period in the year from September on
10 out as you can.

11 MR. WESTERFIELD: We'd be happy to do
12 that; however, the number of topics is such a
13 broad one --

14 HEARING OFFICER VALKOSKY: I understand
15 that, but all of the parties did that for the
16 first set of topics.

17 MR. WESTERFIELD: But didn't we have a
18 discrete set of topics at that --

19 HEARING OFFICER VALKOSKY: No.

20 MR. WESTERFIELD: Oh, we didn't?

21 HEARING OFFICER VALKOSKY: No, we
22 didn't. It was all the topics.

23 MR. WESTERFIELD: Okay.

24 HEARING OFFICER VALKOSKY: And that was
25 very helpful, frankly. So, in fact, I think I'll

1 retract the e-mail contact and I would request
2 that the parties do that within the next week,
3 okay?

4 COMMISSIONER PERNELL: Because we don't
5 want to be left, Mr. Carroll, where, you know, the
6 time has hurt us. We do have to move on, but we
7 want to be accommodating to the parties.

8 MR. RAMO: Do you want the submissions
9 by e-mail to you, or --

10 HEARING OFFICER VALKOSKY: E-mail is
11 fine. Yeah, it doesn't have to be more formal
12 than that.

13 MS. MINOR: I just have one further
14 questions, and I'm not familiar with your
15 procedures in this regard. Should we file errata
16 to the transcripts, errata sheets? Was that part
17 of your practice?

18 HEARING OFFICER VALKOSKY: That has been
19 done. It is not typically done, and I think to
20 the extent it is done it's when it is, quote, a
21 significant misprint in the transcript.

22 And, with that, I'd like to thank the
23 parties for their attendance, participation,
24 professionalism, and endurance.

25 COMMISSIONER PERNELL: All right. If

1 there is nothing else to come before the
2 committee, this meeting is adjourned. Thank you
3 again.

4 (Thereupon, the conference was
5 adjourned at 6:50 p.m.)

6 --oOo--

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
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I further certify that I am not of
counsel or attorney for any of the parties to said
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